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Presidential Documents

Title 3—

The President

Executive Order 14078 of July 19, 2022

Bolstering Efforts To Bring Hostages and Wrongfully Detained United States Nationals Home

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Robert Levinson Hostage Recovery and Hostage-taking Accountability Act (22 U.S.C. 1741 *et seq.*) (Levinson Act), the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, JOSEPH R. BIDEN JR., President of the United States of America, find that hostage-taking and the wrongful detention of United States nationals are heinous acts that undermine the rule of law. Terrorist organizations, criminal groups, and other malicious actors who take hostages for financial, political, or other gain—as well as foreign states that engage in the practice of wrongful detention, including for political leverage or to seek concessions from the United States—threaten the integrity of the international political system and the safety of United States nationals and other persons abroad. I therefore determine that hostage-taking and the wrongful detention of United States nationals abroad constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. I hereby declare a national emergency to deal with this threat.

The United States Government must redouble its efforts at home and with partners abroad to deter these practices and to secure the release of those held as hostages or wrongfully detained. Processes established under Executive Order 13698 of June 24, 2015 (Hostage Recovery Activities) and Presidential Policy Directive 30 of June 24, 2015 (U.S. Nationals Taken Hostage Abroad and Personnel Recovery Efforts) (PPD–30) have facilitated close interagency coordination on efforts to secure the safe release of United States nationals taken hostage abroad, including engagement with the families of hostages and support of diplomatic engagement with partners abroad. This order reinforces the roles, responsibilities, and commitments contained in those directives and seeks to ensure that—as with hostage recovery activities—interagency coordination, family engagement, and diplomatic tools are enshrined in United States Government efforts to secure the safe release and return of United States nationals wrongfully detained by foreign state actors. This order also reinforces tools to deter and to impose tangible consequences on those responsible for, or complicit in, hostage-taking or the wrongful detention of a United States national abroad.

Accordingly, I hereby order:

Section 1. Executive Order 13698 and PPD–30 shall continue to apply to United States hostage recovery activities. Nothing in this order shall alter the responsibilities of the Hostage Recovery Fusion Cell (HRFC), the Hostage Response Group (HRG), or the Special Presidential Envoy for Hostage Affairs (SPEHA), established by Executive Order 13698, with respect to hostage recovery activities under Executive Order 13698 or PPD–30. Nor shall this order alter the scope of PPD–30, which applies to both suspected and confirmed hostage-takings in which a United States national is abducted or held outside of the United States, as well as to other hostage-takings occurring abroad in which the United States has a national interest, but

does not apply if a foreign government confirms that it has detained a United States national.

Sec. 2. (a) The HRG shall, in coordination with the National Security Council's regional directorates as appropriate, convene on a regular basis and as needed at the request of the National Security Council to work to secure the safe release of United States nationals held hostage or wrongfully detained abroad.

(b) The HRG, in support of the Deputies Committee of the National Security Council and consistent with the process outlined in National Security Memorandum 2 of February 4, 2021 (Renewing the National Security Council System), or any successor memorandum, shall:

(i) identify and recommend options and strategies to the President through the Assistant to the President for National Security Affairs to secure the recovery of hostages or the return of wrongfully detained United States nationals;

(ii) coordinate the development and implementation of policies, strategies, and procedures for the recovery of hostages or the return of wrongfully detained United States nationals;

(iii) coordinate and deconflict policy guidance, strategies, and activities that potentially affect the recovery or welfare of United States nationals held hostage or the return or welfare of United States nationals wrongfully detained abroad, including reviewing proposed recovery or return options;

(iv) receive regular updates from the HRFC, the Office of the SPEHA, and other executive departments and agencies (agencies), as the HRG deems appropriate, on the status of United States nationals being held hostage or wrongfully detained abroad and measures being taken to effect safe releases;

(v) receive regular updates from the Department of State on all new wrongful detention determinations; and

(vi) where higher-level guidance is required, make recommendations to the Deputies Committee of the National Security Council.

Sec. 3. (a) The SPEHA shall report to the Secretary of State on a regular basis and as needed to advance efforts to secure the safe release of United States nationals wrongfully detained abroad.

(b) The SPEHA shall, as appropriate and consistent with applicable law:

(i) coordinate diplomatic engagements and strategy regarding hostage and wrongful detention cases, in coordination with the HRFC and relevant agencies, as appropriate and consistent with policy guidance communicated through the HRG;

(ii) share information, including information acquired during consular interactions and engagements, regarding wrongful detention cases with relevant agencies to facilitate close interagency coordination;

(iii) draw on the experience and expertise of the HRFC to support efforts to return wrongfully detained United States nationals, including by providing support and assistance to the families of those wrongfully detained;

(iv) develop and regularly update, in coordination with relevant agencies, strategies for wrongful detention cases for review by the HRG;

(v) ensure, in coordination with the Office of the Director of National Intelligence, that relevant agencies have access to necessary information, including intelligence information, on wrongful detention cases to inform strategies and options; and

(vi) share, in coordination with the Office of the Director of National Intelligence, relevant information, including intelligence information, on developments in wrongful detention cases with the families of wrongfully detained United States nationals, in a timely manner, as appropriate and consistent with the protection of sources and methods.

(c) To ensure that the United States Government provides a coordinated, effective, and supportive response to wrongful detentions, the Secretary of State shall identify adequate resources to enable the SPEHA to:

(i) ensure that all interactions by executive branch officials with the family of a wrongfully detained United States national occur in a coordinated fashion and that the family receives consistent and accurate information from the United States Government, as appropriate and consistent with applicable law;

(ii) provide support and assistance to wrongfully detained United States nationals and their families throughout their detention, including through coordination with the HRFC, as appropriate and consistent with applicable law; and

(iii) provide support and assistance to United States nationals upon their return to the United States from wrongful detention, including through coordination with the HRFC and the Department of Health and Human Services, as appropriate and consistent with applicable law.

Sec. 4. The SPEHA, in coordination with the HRG, the HRFC, and relevant agencies, as appropriate, shall identify and recommend options and strategies to the President through the Assistant to the President for National Security Affairs to reduce the likelihood of United States nationals being held hostage or wrongfully detained abroad. The options shall seek to counter and deter hostage-takings and wrongful detentions by terrorist organizations, foreign governments, and other actors by imposing costs on those who participate in, support, or facilitate such conduct. The strategies shall seek to deter any effort to engage in hostage-taking or the wrongful detention of United States nationals abroad through cooperation with like-minded foreign governments and organizations.

Sec. 5. The Secretary of State shall publicly or privately designate or identify officials of foreign governments who are involved, directly or indirectly, in wrongful detentions, as appropriate and consistent with applicable law, including section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2022 (Division K of Public Law 117–103).

Sec. 6. (a) All property and interests in property of the following persons that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General:

(A) to be responsible for or complicit in, to have directly or indirectly engaged in, or to be responsible for ordering, controlling, or otherwise directing, the hostage-taking of a United States national or the wrongful detention of a United States national abroad;

(B) to have attempted to engage in any activity described in subsection (a)(i)(A) of this section; or

(C) to be or have been a leader or official of an entity that has engaged in, or whose members have engaged in, any of the activities described in subsections (a)(i)(A) or (a)(i)(B) of this section relating to the leader's or official's tenure;

(ii) any foreign person determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General:

(A) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of:

(1) any activity described in subsection (a)(i)(A) of this section; or

(2) any person whose property and interests in property are blocked pursuant to this order;

(B) to be owned, controlled, or directed by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order; or

(C) to have attempted to engage in any activity described in subsection (a)(ii)(A) of this section.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this order.

Sec. 7. (a) The unrestricted immigrant and nonimmigrant entry into the United States of noncitizens determined to meet one or more of the criteria set forth in section 6(a) of this order would be detrimental to the interests of the United States, and the entry of such persons into the United States, as immigrants or nonimmigrants, is hereby suspended, except when the Secretary of State or the Secretary of Homeland Security, as appropriate, determines that the person's entry would not be contrary to the interests of the United States, including when the Secretary of State or the Secretary of Homeland Security, as appropriate, so determines, based on a recommendation of the Attorney General, that the person's entry would further important United States law enforcement objectives.

(b) The Secretary of State shall implement this authority as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security, may establish.

(c) The Secretary of Homeland Security shall implement this order as it applies to the entry of noncitizens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish.

(d) Such persons shall be treated by this section in the same manner as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 8. I hereby determine that the making of donations of the types of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by section 6 of this order.

Sec. 9. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 10. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 6 of this order.

Sec. 11. The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury. All agencies of the United States Government shall take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 12. Nothing in this order shall prohibit transactions for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof.

Sec. 13. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to submit recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1642(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 14. For purposes of this order:

(a) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(b) the term ''foreign person'' means any citizen or national of a foreign state (including any such individual who is also a citizen or national of the United States, provided such individual does not reside in the United States) or any entity not organized solely under the laws of the United States or existing solely in the United States;

(c) the term ''hostage-taking'' has the same meaning as provided in PPD–30, which is the unlawful abduction or holding of a person or persons against their will in order to compel a third person or governmental organization to do or to abstain from doing any act as a condition for the release of the person detained;

(d) the term ''noncitizen'' means any person who is not a citizen or noncitizen national of the United States;

(e) the term ''person'' means an individual or entity;

(f) the term ''United States national'' means:

(i) a ''national of the United States'' as defined in 8 U.S.C. 1101(a)(22) or 8 U.S.C. 1408; or

(ii) a lawful permanent resident with significant ties to the United States;

(g) the term ''United States person'' means any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and

(h) the term ''wrongful detention'' means a detention that the Secretary of State has determined to be wrongful consistent with section 302(a) of the Levinson Act.

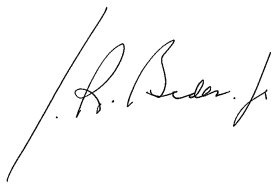
Sec. 15. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
July 19, 2022.

[FR Doc. 2022–15743
Filed 7–20–22; 8:45 am]
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Rules and Regulations

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0010; Project Identifier AD–2021–00850–T; Amendment 39–22120; AD 2022–15–01]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. This AD was prompted by a report that during a C-check, corrosion was found in the vertical fin tension bolt hole located in the aluminum crown frames at a certain section. This AD requires inspecting certain vertical fin tension bolt holes; reviewing the bolt sealant application installation procedure in the existing maintenance or inspection program, as applicable; checking maintenance records to determine the replacement status of vertical fin tension bolts; and doing applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 25, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 25, 2022.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0010.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0010; 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, 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.

FOR FURTHER INFORMATION CONTACT: Greg Rutar, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3529; email: *greg.rutar@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. The NPRM published in the **Federal Register** on February 15, 2022 (87 FR 8436). The NPRM was prompted by a report that during a C-check, corrosion was found in the vertical fin tension bolt hole located in the aluminum crown frames at Section 48. In the NPRM, the FAA proposed to require inspecting certain vertical fin tension bolt holes; reviewing the bolt sealant application installation procedure in the existing maintenance or inspection program, as applicable; checking maintenance records to determine the replacement status of vertical fin tension bolts; and doing applicable on-condition actions. The FAA is issuing this AD to address undetected corrosion, which could lead to the structure falling below residual strength requirements and the loss of the vertical fin, and result in loss of control of the airplane.

Discussion of Final Airworthiness Directive

Comments

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

The FAA received additional comments from one commenter, United Airlines (UAL). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Revise the Exception Requirement for a Repair

UAL requested that the FAA revise the exception requirement for a repair. UAL stated that paragraph (h)(2) of the proposed AD specifies that repairs require an operator to contact Boeing for repair instructions and to do the repair using a method approved in accordance with the procedures specified in paragraph (i) of the proposed AD. UAL commented that in paragraph E.2. ''Work Instructions'' of Boeing Alert Requirements Bulletin B787–81205–SB550010–00 RB, Issue 001, dated May 24, 2021, it requires, for Condition 2, Action 1 and Condition 7.2, Action 1, to contact Boeing for repair instructions if ''any corrosion or any finish degradation found.'' UAL commented that per Note 11 of paragraph E.1. ''General Information'' of Boeing Alert Requirements Bulletin B787–81205–SB550010–00 RB, Issue 001, dated May 24, 2021, finish degradation is defined as ''deterioration, delamination, excessive wear, or erosion of surface, substrates, or coating.'' UAL stated that since primer is considered a protective coating, any degradation of primer at the bolt hole would require repair instructions approved by an alternative method of compliance (AMOC); however, Tasks 2, 4, 6, and 8 of Boeing Alert Requirements Bulletin B787–81205–SB550010–00 RB, Issue 001, dated May 24, 2021, already contain primer instructions if there is degradation, which specifies to, ''Apply two coats of BMS 10–11, Type 1 primer if bolt hole in the aluminum frame has protective finish degradation.'' UAL commented that, therefore, it should not be necessary to contact Boeing and obtain an AMOC for a repair approval if only primer degradation is found in the bolt hole. UAL also noted that it expects some primer degradation to

occur based on the action of removing the bolts for the inspection (*i.e.,* chafing between bolt shank and adjacent hole).

UAL stated that since the instructions for primer degradation and application are already specified in Boeing Alert Requirements Bulletin B787–81205–SB550010–00 RB, Issue 001, dated May 24, 2021, it would like clarification that primer degradation and application does not fall within the category of ''finish degradation'' and does not require an AMOC for a repair approval. UAL stated that its request meets an acceptable level of safety since primer coatings would be restored if required, preventing the safety concern of bolt hole corrosion.

The FAA agrees with the commenter's request. The FAA agrees that Task 2, 4, 6, and 8 in Boeing Alert Requirements Bulletin B787–81205–SB550010–00 RB, Issue 001, dated May 24, 2021, contain primer application instructions if there is finish degradation; therefore, a request for an AMOC repair approval as specified in paragraph (i) of this AD is not required. Primer is the only bolt hole finish in the aluminum frame, therefore ''primer degradation'' is the only ''finish degradation'' that would be found in the inspected area. The FAA has revised paragraph (h)(2) of this AD to specify that if only finish degradation (no corrosion) is found, this AD requires applying two coats of BMS 10–11, Type 1 primer as specified in Tasks 2, 4, 6, and 8 of the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB550010–00 RB, Issue 001, dated May 24, 2021.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, and any other changes described previously, 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 Boeing Alert Requirements Bulletin B787–81205–SB550010–00 RB, Issue 001, dated May 24, 2021. This service information specifies, depending on airplane configuration, procedures for a detailed inspection of the vertical fin tension bolt holes (16 locations) in the aluminum crown frames, composite deck, and root fittings for corrosion and finish degradation; a review of the existing maintenance or inspection program, as applicable, related to the vertical fin tension bolt installation procedure to determine if the sealant application is correct; a review of the maintenance records to determine if a vertical fin tension bolt has been replaced and to determine the sealant application procedure that was used; and applicable on-condition actions. On-condition actions include applying sealant and installing new vertical fin tension bolts and barrel nuts; revising the existing maintenance or inspection program, as applicable, to include the minimum requirement for the correct vertical fin tension bolt sealant application procedure; a detailed inspection for corrosion and finish degradation of only the affected vertical fin tension bolt holes in the aluminum crown frame, composite deck, and root fittings; and repair.

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

Costs of Compliance

The FAA estimates that this AD affects 116 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection (16 locations), sealant application, and bolt/nut installation.	5.2 work-hours × $85 per hour = $442	$20,580	$21,022	$2,438,552
Review the existing maintenance or inspection program, as applicable.	1 work-hour × $85 per hour = $85	0	85	9,860
Records review	1 work-hour × $85 per hour = $85	0	85	9,860

The FAA estimates the following costs to do any necessary detailed inspection of the affected holes that would be required based on the results of the actions in this AD. The agency has no way of determining the number of aircraft that might need these on-condition actions:

ON-CONDITION COSTS *

Action	Labor cost	Parts cost	Cost per product
Inspection	5 work-hours × $85 per hour = $425	$0	$425

* Does not include cost of revising the maintenance program.

The FAA has determined that revising the existing maintenance or inspection program, if required, takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has received no definitive data on which to base the cost estimates for the repair specified in this AD.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–15–01 The Boeing Company: Amendment 39–22120; Docket No. FAA–2022–0010; Project Identifier AD–2021–00850–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 25, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin B787–81205–SB550010–00 RB, Issue 001, dated May 24, 2021.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by a report that during a C-check, corrosion was found in the vertical fin tension bolt hole located in the aluminum crown frames at Section 48. The FAA is issuing this AD to address undetected corrosion, which could lead to the structure falling below residual strength requirements and the loss of the vertical fin, and result in loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB550010–00 RB, Issue 001, dated May 24, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB550010–00 RB, Issue 001, dated May 24, 2021.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin B787–81205–SB550010–00, Issue 001, dated May 24, 2021, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB550010–00 RB, Issue 001, dated May 24, 2021.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB550010–00 RB, Issue 001, dated May 24, 2021, use the phrase ''the Issue 1 date of Requirements Bulletin B787–81205–SB550010–00 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin B787–81205–SB550010–00 RB, Issue 001, dated May 24, 2021, specifies contacting Boeing for repair instructions, this AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD, except if only finish degradation (no corrosion) is found, this AD requires applying two coats of BMS 10–11, Type 1 primer, as specified in Tasks 2, 4, 6, and 8 of Boeing Alert Requirements Bulletin B787–81205–SB550010–00 RB, Issue 001, dated May 24, 2021.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

For more information about this AD, contact Greg Rutar, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3529; email: *greg.rutar@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin B787–81205–SB550010–00 RB, Issue 001, dated May 24, 2021.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on

the availability of this material at NARA, *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on July 7, 2022.

Christina Underwood,

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

[FR Doc. 2022–15492 Filed 7–20–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0469; Project Identifier MCAI–2021–00124–Q; Amendment 39–22121; AD 2022–15–02]

RIN 2120–AA64

Airworthiness Directives; Cameron Balloons Ltd. Burner Assemblies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Cameron Balloons Ltd. (Cameron) Stratus double burner assemblies installed on hot air balloons. This AD was prompted by reports from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as fatigue cracking of the weld on Stratus double burner hangers. This AD requires repetitively inspecting certain Stratus double burner hangers and replacing certain Stratus double burners, and prohibits installing certain parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 25, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 25, 2022.

ADDRESSES: For service information identified in this final rule, contact Cameron Balloons Ltd., St Johns Street, Bedminster, Bristol, BS3 4NH, United Kingdom; phone: +44 0 117 9637216; email: *technical@cameronballoons.co.uk*; website: *https://www.cameronballoons.co.uk.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* under Docket No. FAA–2022–04690469.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* under Docket No. FAA–2022–0469; 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 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.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4144; email: *mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Cameron Stratus double burner assembly part number (P/N) CB8720 and P/N CB8721 installed on hot air balloons. The NPRM published in the **Federal Register** on May 5, 2022 (87 FR 26699). The NPRM was based on MCAI from the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued AD 2021–0042, dated January 29, 2021 (referred to after this as ''the MCAI''), to address the unsafe condition on all hot air balloons. The MCAI states:

> An occurrence was been reported of a Stratus burner hanger, [part number] P/N CB8504, failing after landing, leaving one burner unit detached from the load frame. Investigation revealed a limited number of similar failures. Comparable issues have been experienced with other parts of the Stratus product line (see Australian [Civil Aviation Safety Authority] CASA AWB 14–001 [Airworthiness Bulletin AWB 14–001, Issue 3, dated February 5, 2021]). The suspected cause is fatigue cracking of the weld, caused mainly during ground transportation with the burner erect, combined with an overload event.
>
> This condition, if not detected and corrected, could lead to burner falling on the balloon occupant's head, resulting in injury to balloon occupants. It could also lead to an uncontrolled cold descent and hard landing, possibly resulting in injury to balloon occupants and persons on the ground.
>
> To address this potential unsafe condition, Cameron Balloons issued the SB [Service Bulletin 28, Revision 3, dated February 3, 2021], providing inspection and replacement instructions. It was determined that some burner hangers cannot be inspected as they are covered with a doubler plate to reinforce the central part of the hanger bracket.
>
> For the reasons described above, this [EASA] AD requires repetitive detailed inspections (DET) of the affected parts A and, depending on findings, replacement with a serviceable part. This [EASA] AD also requires direct replacement of the burner hanger installed on affected parts B.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* under Docket No. FAA–2022–0469.

In the NPRM, the FAA proposed to require repetitively inspecting certain Stratus double burner hangers and replacing certain other Stratus double burners. The FAA also proposed to prohibit installing certain parts. The FAA is issuing this AD to prevent burners from separating from the balloon. The unsafe condition, if not addressed, could result in an uncontrolled cold descent and hard landing of the balloon.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

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 these products. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Cameron Balloons Service Bulletin 28, Revision 3, dated February 3, 2021. The service information specifies identifying the Stratus double burner hanger, inspecting it in accordance with Cameron Balloons SB28: Accomplishment Instructions, Stratus Double Burner; Mounting Hanger Inspection, CBL/TN/DCB/3191, Issue B, dated February 4, 2020 (CBL/TN/DCB/3191 Issue B), and replacing it if there are any cracks.

The FAA also reviewed CBL/TN/DCB/3191 Issue B, which contains procedures for identifying and inspecting affected Stratus double burner hangers.

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

Differences Between This AD and the MCAI

The MCAI requires reporting information to Cameron Balloons, and this AD does not.

Costs of Compliance

The FAA estimates that this AD affects 220 burner assemblies that have been produced worldwide. The FAA has no way of knowing how many of these burner assemblies are installed on hot air balloons of U.S. Registry. Therefore, for the purposes of this AD, the FAA is basing the fleet cost estimate on the maximum number of 220 burner assemblies.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per hot air balloon	Cost on U.S. operators
Inspect burner hangers	1 work-hour × $85 per hour = $85	Not applicable	$85 per inspection cycle.	$18,700 per inspection cycle.

The FAA estimates the following costs to replace a cracked burner hanger or a burner that has a doubler plate. The FAA has no way of determining the number of hot air balloons that would need this action.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per hot air balloon
Replace with a serviceable part	1 work-hour × $85 per hour = $85	$250	$335

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 this AD:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–15–02 Cameron Balloons Ltd.: Amendment 39–22121; Docket No. FAA–2022–0469; Project Identifier MCAI–2021–00124–Q.

(a) Effective Date

This airworthiness directive (AD) is effective August 25, 2022.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to hot air balloons, certificated in any category, with a Cameron Balloons Ltd. Stratus double burner assembly part number (P/N) CB8720 or P/N CB8721 installed.

(2) The affected burner assemblies may be installed on hot air balloon models including, but not limited to, those of the following design approval holders:

(i) Aerostar International, Inc.;

(ii) Ballonbau Worner GmbH;

(iii) Balóny Kubíček spol. s.r.o.;

(iv) Cameron Balloons Ltd.;

(v) Eagle Balloons Corp.;

(vi) JR Aerosports, Ltd (type certificate previously held by Sundance Balloons (US));

(vii) Lindstrand Balloons Ltd.; and

(viii) Michael D. McGrath (type certificate subsequently transferred to Andrew Philip Richardson, Adams Aerostats LLC).

(d) Subject

Joint Aircraft System Component (JASC) Code 7100, Powerplant System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as suspected fatigue cracking of the weld on affected burner hangers. The FAA is issuing this AD to prevent burners from separating from the

balloon. The unsafe condition, if not addressed, could result in an uncontrolled cold descent and hard landing of the balloon.

(f) Compliance

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

(g) Definitions

(1) For purposes of this AD, an ''affected part A'' is a Stratus double burner hanger P/N CB8504, Issue A, Issue B, or Issue C, except those installed on a Stratus double burner P/N CB8720 or P/N CB8721 with a doubler plate reinforcing the central part of the hanger bracket, as shown in figure 2 of Cameron Balloons Service Bulletin 28, Revision 3, dated February 3, 2021.

(2) For purposes of this AD, an ''affected part B'' is a Stratus double burner P/N CB8720 or P/N CB8721 with a doubler plate reinforcing the central part of the hanger bracket, as shown in figure 2 of Cameron Balloons Service Bulletin 28, Revision 3, dated February 3, 2021.

(3) For purposes of this AD, a ''serviceable part'' is a Stratus double burner hanger P/N CB8504, Issue D or later.

(h) Actions

(1) Within 10 hours time-in-service (TIS) or 30 days, whichever occurs first after the effective date of this AD, inspect the weld of each affected part A for cracks in accordance with paragraphs 3.1.2 through 3.1.4 and Figure 6 of Cameron Balloons SB28: Accomplishment Instructions, Stratus Double Burner; Mounting Hanger Inspection, CBL/TN/DCB/3191, Issue B, dated February 4, 2020.

(i) If there are no cracks, repeat the inspection in paragraph (h)(1) of this AD at intervals not to exceed 12 months.

(ii) If there is a crack, before further flight, remove the affected part A from service and install a serviceable part. Installation of a serviceable part on a Stratus double burner assembly constitutes terminating action for the repetitive inspections required by paragraph (h)(1) of this AD for that Stratus double burner assembly.

(2) Within 30 days or 10 hours TIS, whichever occurs first after the effective date of this AD, remove each affected part B from service and install a serviceable part.

(3) As of the effective date of this AD, do not install on any hot air balloon an affected part A.

(4) As of the effective date of this AD, do not install on any hot air balloon an affected part B, unless it is equipped with a serviceable part.

(i) Credit for Previous Actions

You may take credit for the initial inspection required by paragraph (h)(1) of this AD if you performed the inspection before the effective date of this AD using Cameron Balloons Service Bulletin 28, Revision 2, dated March 4, 2020; or Revision 3, dated February 3, 2021.

(j) Alternative Methods of Compliance (AMOCs)

(1) 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 local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(2) of this AD and email to: *9-AVS-AIR-730-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Additional Information

(1) Refer to European Union Aviation Safety Agency (EASA) AD 2021–0042, dated January 29, 2021, for related information. This EASA AD may be found in the AD docket at *https://www.regulations.gov* under Docket No. FAA–2022–0469.

(2) For more information about this AD, contact Mike Kiesov, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4144; email: *mike.kiesov@faa.gov.*

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(3) and (4) of this AD.

(l) Material Incorporated by Reference

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

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

(i) Cameron Balloons SB28: Accomplishment Instructions, Stratus Double Burner; Mounting Hanger Inspection, CBL/TN/DCB/3191, Issue B, dated February 4, 2020.

(ii) Cameron Balloons Service Bulletin 28, Revision 3, dated February 3, 2021.

Note 1 to paragraph (l)(2)(ii): The document date is identified only on the first page of this document.

(3) For service information identified in this AD, contact Cameron Balloons Ltd., St. Johns Street, Bedminster, Bristol, BS3 4NH, United Kingdom; phone: +44 0 117 9637216; email: *technical@cameronballoons.co.uk*; website: *https://www.cameronballoons.co.uk.*

(4) You may review this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on July 7, 2022.

Christina Underwood,

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

[FR Doc. 2022–15421 Filed 7–20–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0508; Project Identifier MCAI–2021–01120–T; Amendment 39–22118; AD 2022–14–13]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2015–07–05, which applied to all BAE Systems (Operations) Limited Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes. AD 2015–07–05 required repetitive external eddy current inspections on the aft skin lap joints of the rear fuselage for cracking, corrosion, and other defects, and repair if necessary. This AD continues to require the actions in AD 2015–07–05, at certain revised compliance times, and also requires repetitive low frequency eddy current (LFEC) inspections for any cracking, corrosion, and other defects in the aft skin lap joints of the rear fuselage and in the fuselage skin panels, and repair if necessary. This AD was prompted by a report of a pressurization problem on an airplane during climb-out; a subsequent investigation showed a crack in the fuselage skin; and that repetitive LFEC inspections in the rear fuselage aft skin lap joints and in the fuselage skin panels are necessary. Certain compliance times must also be revised. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 25, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 25, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of May 19, 2015 (80 FR 19871, April 14, 2015).

ADDRESSES: For service information identified in this final rule, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com*; internet *https://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0508.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0508; 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, 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.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3228; email *Todd.Thompson@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Civil Aviation Authority (CAA), which is the aviation authority for the United Kingdom, has issued CAA AD G–2021–0008, dated September 8, 2021 (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all BAE Systems (Operations) Limited Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0508.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2015–07–05, Amendment 39–18133 (80 FR 19871, April 14, 2015) (AD 2015–07–05). AD 2015–07–05 applied to all BAE Systems (Operations) Limited Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes. The NPRM published in the **Federal Register** on May 6, 2022 (87 FR 27037). The NPRM was prompted by a report of a pressurization problem on an airplane during climb-out; a subsequent investigation showed a crack in the fuselage skin; and that repetitive LFEC inspections in the rear fuselage aft skin lap joints and in the fuselage skin panels are necessary. Certain compliance times must also be revised. The NPRM proposed to continue the actions required in AD 2015–07–05, at certain revised compliance times, and also require repetitive LFEC inspections for any cracking, corrosion, and other defects in the aft skin lap joints of the rear fuselage and in the fuselage skin panels, and repair if necessary. The FAA is issuing this AD to address cracking, corrosion, and other defects on the rear fuselage aft skin joints and frames and in the fuselage panels, which could affect the structural integrity of the airplane. See the MCAI for additional background information.

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

The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. 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. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

BAE Systems (Operations) Limited has issued Inspection Service Bulletin 53–239, Revision 5, including Appendix 2, Revision 5, and Appendix 3, Revision 1, all dated March 2, 2017. This service information describes procedures for repetitive external eddy current and LFEC inspections on the aft skin lap joints of the rear fuselage and in the fuselage skin panels, for any cracking, corrosion, and other defects (*e.g.,* surface damage and spot displacement); and repair if necessary.

This AD also requires BAE Systems (Operations) Limited Inspection Service Bulletin 53–239, including Appendix 2, Revision 3, dated May 7, 2014, which the Director of the Federal Register approved for incorporation by reference as of May 19, 2015 (80 FR 19871, April 14, 2015).

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

Costs of Compliance

The FAA estimates that this AD affects 20 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2015-07-05.	8 work-hours × $85 per hour = $680 per inspection cycle.	$0	$680 per inspection cycle.	$13,600 per inspection cycle.
New proposed actions	5 work-hours × $85 per hour = $425	0	$425	$8,500 per inspection cycle.

The FAA has received no definitive data on which to base the cost estimates for the repairs specified in this AD.

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

Regulatory Findings

The FAA determined that this 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) 2015–07–05, Amendment 39–18133 (80 FR 19871, April 14, 2015); and

■ b. Adding the following new AD:

2022–14–13 BAE Systems (Operations) Limited: Amendment 39–22118; Docket No. FAA–2022–0508; Project Identifier MCAI–2021–01120–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 25, 2022.

(b) Affected Airworthiness Directives (ADs)

This AD replaces AD 2015–07–05, Amendment 39–18133 (80 FR 19871, April 14, 2015) (AD 2015–07–05).

(c) Applicability

This AD applies to all BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a report of a pressurization problem on an airplane during climb-out; a subsequent investigation showed a crack in the fuselage skin; and that repetitive low frequency eddy current (LFEC) inspections in the rear fuselage aft skin lap joints and in the fuselage skin panels are necessary. Certain compliance times must also be revised. The FAA is issuing this AD to address cracking, corrosion, and other defects on the rear fuselage aft skin joints and frames and in the fuselage panels, which could affect the structural integrity of the airplane.

(f) Compliance

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

(g) Retained Repetitive Inspections, With New Service Information

This paragraph restates the requirements of paragraph (g) of AD 2015–07–05, with new service information.

(1) Within the compliance times specified in paragraphs (g)(1)(i) and (ii) of this AD, as applicable: Do an external eddy current inspection on the aft skin lap joints of the rear fuselage for cracking, corrosion, and other defects (*i.e.,* surface damage and spot displacement); in accordance with paragraph 2.C. of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin 53–239, including Appendix 2, Revision 3, dated May 7, 2014; or paragraph 2. of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin 53–239, Revision 5, including Appendix 2, Revision 5, and Appendix 3, Revision 1, all dated March 2, 2017. As of the effective date of this AD, use BAE Systems (Operations) Limited Inspection Service Bulletin 53–239, Revision 5, including Appendix 2, Revision 5, and Appendix 3, Revision 1, all dated March 2, 2017, only.

(i) For any airplane which has accumulated 9,000 flight cycles or more since the airplane's first flight as of May 19, 2015 (the effective date of AD 2015–07–05): Do the inspection within 1,000 flight cycles or 6 months after May 19, 2015, whichever occurs first.

(ii) For any airplane which has accumulated less than 9,000 flight cycles since the airplane's first flight as of May 19, 2015 (the effective date of AD 2015–07–05): Do the inspection before accumulating 10,000 flight cycles since the airplane's first flight.

(2) Repeat the inspection required by paragraph (g)(1) of this AD thereafter at intervals not to exceed the times specified in paragraphs (g)(2)(i) and (ii) of this AD, as applicable to the airplane's modification status.

(i) For Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes post modification HCM50070E, or post modification HCM50070F, or post modification HCM50259A, repeat the inspection at intervals not to exceed 4,000 flight cycles.

(ii) For Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes premodification HCM50070E, and premodification HCM50070F, and premodification HCM50259A, repeat the inspection at intervals not to exceed 7,500 flight cycles.

(h) Retained Corrective Action With Revised Repair Approval

This paragraph restates the requirements of paragraph (h) of AD 2015–07–05, with revised repair approval. If any cracking, corrosion, or other defect is found during any inspection required by AD 2015–07–05: Before further flight as of May 19, 2015 (the effective date of AD 2015–07–05), repair using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or the European Aviation Safety Agency (EASA); or BAE Systems (Operations) Limited's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature. Accomplishment of the repair does not constitute a terminating action for the inspections required by paragraph (g) of this AD. As of the effective date of this AD, repair approvals must be obtained through the Manager, Large Aircraft Section, International Validation Branch, FAA; or the Civil Aviation Authority of the United Kingdom (UK CAA); or BAE Systems (Operations) Limited's UK CAA DOA.

(i) New Requirement of This AD: Repetitive LFEC Inspections

After the effective date of this AD, at the applicable times specified in paragraph 1.D. ''Compliance'' of BAE Systems (Operations) Limited Inspection Service Bulletin 53–239, Revision 5, including Appendix 2, Revision 5, and Appendix 3, Revision 1, all dated March 2, 2017: Do an LFEC inspection for any cracking, corrosion, and other defects in the aft skin lap joints of the rear fuselage and in the fuselage skin panels, in accordance with paragraph ''1. Procedure'' of Appendix 2 and Appendix 3 of BAE Systems (Operations) Limited Inspection Service Bulletin 53–239, Revision 5, including Appendix 2, Revision 5, and Appendix 3, Revision 1, all dated March 2, 2017. Repeat the LFEC inspection thereafter at intervals not to exceed the times specified in paragraph 1.D. ''Compliance'' of BAE

Systems (Operations) Limited Inspection Service Bulletin 53–239, Revision 5, including Appendix 2, Revision 5, and Appendix 3, Revision 1, all dated March 2, 2017.

(j) New Requirement of This AD: Corrective Action

If any cracking, corrosion, or other defect is found during any inspection required by this AD: Before further flight, repair using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or the UK CAA; or BAE Systems (Operations) Limited's UK CAA DOA. If approved by the DOA, the approval must include the DOA-authorized signature. Accomplishment of the repair does not constitute a terminating action for the inspections required by paragraph (i) of this AD.

(k) Credit for Previous Actions

This paragraph provides credit for the following actions required by this AD.

(1) This paragraph provides credit for the initial inspection and corrective action on stringer 30, left hand (LH) and right hand (RH), as required by paragraph (g) of this AD, if those actions were performed before May 19, 2015 (the effective date of AD 2015–07–05), using BAE Systems (Operations) Limited Inspection Service Bulletin 53–239, dated June 13, 2012, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for the initial inspection and corrective action, as required by paragraph (g) of this AD, if those actions were performed before May 19, 2015 (the effective date of AD 2015–07–05), using BAE Systems (Operations) Limited Inspection Service Bulletin 53–239, Revision 1, dated June 18, 2013, which is not incorporated by reference in this AD.

(3) This paragraph provides credit for the initial inspection and corrective action, as required by paragraph (g) of this AD, if those actions were performed before May 19, 2015 (the effective date of AD 2015–07–05), using BAE Systems (Operations) Limited Inspection Service Bulletin 53–239, Revision 2, dated July 15, 2013, which is not incorporated by reference in this AD.

(4) This paragraph provides credit for the initial inspection and corrective action, as required by paragraph (g) of this AD, if those actions were performed before May 19, 2015 (the effective date of AD 2015–07–05), using BAE Systems (Operations) Limited Inspection Service Bulletin 53–239, including Appendix 2, Revision 3, dated May 7, 2014, which was incorporated by reference in AD 2015–07–05, Amendment 39–18133 (80 FR 19871, April 14, 2015).

(5) This paragraph provides credit for the actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using BAE Systems (Operations) Limited Inspection Service Bulletin 53–239, Revision 4, including Appendix 2, Revision 4, and Appendix 3, Initial issue, dated March 31, 2016.

(l) No Reporting Requirement

Although BAE Systems (Operations) Limited Inspection Service Bulletin 53–239, Revision 5, including Appendix 2, Revision 5, and Appendix 3, Revision 1, all dated March 2, 2017, specifies to report inspection findings, this AD does not require any report.

(m) Other FAA AD Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, 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 Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (n)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(ii) AMOCs for the repetitive external eddy current inspections approved previously for AD 2015–07–05 are approved as AMOCs for the corresponding actions in paragraph (g) of this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or the UK CAA; or BAE Systems (Operations) Limited's UK CAA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) CAA AD G–2021–0008, dated September 8, 2021, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0508.

(2) For more information about this AD, contact Todd Thompson, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3228; email *Todd.Thompson@faa.gov.*

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (o)(5) and (6) of this AD.

(o) 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 August 25, 2022.

(i) BAE Systems (Operations) Limited Inspection Service Bulletin 53–239, Revision 5, including Appendix 2, Revision 5, and Appendix 3, Revision 1, all dated March 2, 2017.

(ii) [Reserved]

(4) The following service information was approved for IBR on May 19, 2015 (80 FR 19871, April 14, 2015).

(i) BAE Systems (Operations) Limited Inspection Service Bulletin 53–239, including Appendix 2, Revision 3, dated May 7, 2014.

(ii) [Reserved]

(5) For service information identified in this AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* internet *https://www.baesystems.com/Businesses/RegionalAircraft/index.htm.*

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

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

Issued on June 30, 2022.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–15485 Filed 7–20–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0288; Project Identifier MCAI–2021–00913–G; Amendment 39–22119; AD 2022–14–14]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher GmbH & Co. Segelflugzeugbau Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Alexander Schleicher GmbH & Co. Segelflugzeugbau Model ASW–15 gliders. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as wing root damage. This AD requires repetitively

inspecting the wing root ribs for cracks, looseness, and damage and replacing any root rib with a crack, a loose rib or lift pin bushing, or any damage. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 25, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 25, 2022.

ADDRESSES: For service information identified in this final rule, contact Alexander Schleicher GmbH & Co. Segelflugzeugbau, Alexander-Schleicher-Str. 1, Poppenhausen, Germany D–36163; phone: +49 (0) 06658 89–0; email: *info@alexander-schleicher.de*; website: *https://www.alexander-schleicher.de.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0288.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0288; 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 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.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; email: *jim.rutherford@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Alexander Schleicher GmbH & Co. Segelflugzeugbau Model ASW–15 gliders. The NPRM published in the **Federal Register** on March 23, 2022 (87 FR 16433). The NPRM was prompted by MCAI from the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued AD 2021–0187, dated August 9, 2021 (referred to after this as ''the MCAI''), to address an unsafe condition on all Alexander Schleicher GmbH & Co. Segelflugzeugbau Model ASW 15 gliders. The MCAI states:

> Occurrences were reported of finding wing root rib damage. Investigation is ongoing to determine the root cause of the damage.
>
> This condition, if not detected and corrected, could reduce the structural integrity of the wing assembly of the sailplane.
>
> To address this potential unsafe condition, Schleicher issued the TN [technical note] to provide inspection instructions.
>
> For the reasons described above, this [EASA] AD requires repetitive inspections of each affected part and, depending on findings, replacement. This [EASA] AD also introduces restrictions for installation of an affected part.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0288.

In the NPRM, the FAA proposed to require repetitively inspecting the wing root ribs for cracks, looseness, and damage and replacing any root rib with a crack, a loose rib or lift pin bushing, or any damage. The FAA is issuing this AD to detect and correct damaged root ribs. The unsafe condition, if not addressed, could result in reduced structural integrity of the wing assembly, which could lead to loss of control of the glider.

Discussion of Final Airworthiness Directive

Comments

The FAA received one comment from an individual. The following presents the comment received on the NPRM and the FAA's response to the comment.

An individual requested the FAA revise the proposed applicability from ''all serial numbers'' to ''serial numbers 15001 up to 15183,'' as stated in the Alexander Schleicher TN. The commenter stated that serial numbers 15184 and subsequent should not be subject to the proposed AD as the wing rib design changed at serial number 15184. The commenter further stated that if the FAA does not change the proposed applicability, owners of gliders with redesigned wing ribs would be required to do needless inspections.

The FAA does not agree that the requested change is necessary. Type Certificate Data Sheet No. G22EU identifies Model ASW–15 gliders as those with serial numbers 15001 through 15183 and Model ASW–15B gliders as those with serial numbers 15184 and subsequent. Therefore, this AD applies to Model ASW–15 gliders, all serial numbers, certificated in any category, which includes only serial numbers 15001 through 15183 inclusive.

The FAA did not change this AD based on this comment.

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 and service information referenced above. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Technical Note No. 29, dated June 28, 2021. This service information specifies inspecting the root ribs at the wings.

The FAA also reviewed Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Repair instruction exchange of wing root ribs according to TN 29, dated June 28, 2021. This service information specifies procedures for replacing the root ribs.

In addition, the FAA reviewed Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Maintenance Instruction G, Issue 1, dated June 28, 2021. This service information specifies procedures for inspecting the root ribs at the wings for damage.

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

Costs of Compliance

The FAA estimates that this AD affects 20 gliders of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per glider	Cost on U.S. operators
Inspect root ribs	1 work-hour × $85 per hour = $85	Not Applicable	$85	$1,700

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the inspection. The agency has no way of determining the number of gliders that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per glider
Replace all four root ribs	8 work-hours × $85 per hour = $680	$1,000	$1,680

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–14–14 Alexander Schleicher GmbH & Co. Segelflugzeugbau: Amendment 39–22119; Docket No. FAA–2022–0288; Project Identifier MCAI–2021–00913–G.

(a) Effective Date

This airworthiness directive (AD) is effective August 25, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Alexander Schleicher GmbH & Co. Segelflugzeugbau Model ASW–15 gliders, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5712, Wing, Rib/Bulkhead.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as wing root rib damage. The FAA is issuing this AD to detect and correct damaged root ribs. The unsafe condition, if not addressed, could result in reduced structural integrity of the wing assembly, which could lead to loss of control of the glider.

(f) Compliance

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

(g) Action

(1) Within 30 days after the effective date of this AD and thereafter at intervals not to exceed 12 months, inspect all wing root ribs (4 places) for cracks, looseness, and damage, in accordance with the Action section in Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Maintenance Instruction G, Issue 1, dated June 28, 2021. If there is a crack in any root rib, a loose rib or lift pin bushing, or any damage, before further flight, replace the root rib in accordance with Action paragraph (B) in Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Technical Note No. 29, dated June 28, 2021, and steps 1 through 7 in Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Repair instruction exchange of wing root ribs according to TN 29, dated June 28, 2021.

(2) Replacing all four wing root ribs is terminating action for the repetitive inspections required by this AD.

(h) Alternative Methods of Compliance (AMOCs)

(1) 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 local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i)(1) of this AD and email to: *9-AVS-AIR-730-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(i) Related Information

(1) For more information about this AD, contact Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; email: *jim.rutherford@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2021–0187, dated August 9, 2021, for more information. You may view the EASA AD at *https://www.regulations.gov* in Docket No. FAA–2022–0288.

(j) Material Incorporated by Reference

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

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

(i) Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Maintenance Instruction G, Issue 1, dated June 28, 2021.

(ii) Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Repair instruction exchange of wing root ribs according to TN 29, dated June 28, 2021.

(iii) Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Technical Note No. 29, dated June 28, 2021.

(3) For service information identified in this AD, contact Alexander Schleicher GmbH & Co. Segelflugzeugbau, Alexander-Schleicher-Str. 1, Poppenhausen, Germany D–36163; phone: +49 (0) 06658 89–0; email: *info@alexander-schleicher.de*; website: *https://www.alexander-schleicher.de.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on July 1, 2022.

Christina Underwood,

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

[FR Doc. 2022–15419 Filed 7–20–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31438; Amdt. No. 4017]

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 July 21, 2022. 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 July 21, 2022.

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, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone (405) 954–4164.

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 part 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, airmen 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 typed 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 Airmen (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 July 8, 2022.

Thomas J. Nichols,

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (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 11 August 2022

Louisville, GA, 2J3, RNAV (GPS) RWY 31, Orig–A
Mc Call, ID, KMYL, RNAV (GPS) RWY 34, Amdt 1B
Alexandria, LA, KAEX, RNAV (GPS) RWY 14, Amdt 1C
Alexandria, LA, KAEX, RNAV (GPS) RWY 36, Orig–D
Ann Arbor, MI, KARB, RNAV (GPS) RWY 24, Amdt 2F
Frankfort, MI, KFKS, RNAV (GPS) RWY 33, Amdt 1C
Greenwood, MS, KGWO, RNAV (GPS) RWY 5, Amdt 2B
Fremont, NE, KFET, Takeoff Minimums and Obstacle DP, Amdt 6B
Clearfield, PA, KFIG, RNAV (GPS) RWY 12, Orig–C
Bamberg, SC, 99N, Takeoff Minimums and Obstacle DP, Orig–A
Shelbyville, TN, KSYI, VOR RWY 18, Amdt 5C
Barre/Montpelier, VT, KMPV, RNAV (GPS) RWY 17, Amdt 1C

Effective 8 September 2022

Bonifay, FL, KBCR, RNAV (GPS) RWY 19, Orig–E
Milledgeville, GA, KMLJ, NDB RWY 28, Amdt 5
Hugoton, KS, KHQG, NDB RWY 2, Amdt 3, CANCELLED
Lake Charles, LA, KLCH, ILS OR LOC RWY 15, Amdt 23A
Falmouth, MA, KFMH, COPTER ILS Y OR LOC Y RWY 32, Orig
Falmouth, MA, KFMH, ILS Z OR LOC Z RWY 32, Amdt 2
Lawrence, MA, KLWM, RNAV (GPS) RWY 14, Orig
Lawrence, MA, KLWM, RNAV (GPS) RWY 32, Orig
Wiggins, MS, M24, RNAV (GPS) RWY 17, Orig
Wiggins, MS, M24, RNAV (GPS) RWY 35, Orig
Wiggins, MS, M24, Takeoff Minimums and Obstacle DP, Orig
Albemarle, NC, KVUJ, ILS OR LOC RWY 22L, Amdt 1D
Albemarle, NC, KVUJ, RNAV (GPS) RWY 22L, Orig–B
Newark, NJ, KEWR, Takeoff Minimums and Obstacle DP, Amdt 5A

RESCINDED: On July 6, 2022 (87 FR 40095), the FAA published an Amendment in Docket No. 31436, Amdt No. 4015, to Part 97 of the Federal Aviation Regulations under section 97.29, and 97.33. The following entries for, Selma, AL, Little Rock, AR, and Louisville, KY, effective August 11, 2022, are hereby rescinded in their entirety:

Selma, AL, KSEM, ILS Y OR LOC Y RWY 33, Amdt 1
Selma, AL, KSEM, ILS Z OR LOC Z RWY 33, Amdt 3
Little Rock, AR, KLIT, ILS OR LOC RWY 4L, Amdt 26C
Louisville, KY, KSDF, ILS OR LOC RWY 17R, Amdt 4A
Louisville, KY, KSDF, ILS OR LOC RWY 35L, ILS RWY 35L (SA CAT I), ILS RWY 35L (CAT II), ILS RWY 35L (CAT III), Amdt 4A
Louisville, KY, KSDF, RNAV (GPS) Y RWY 17L, Amdt 1G

[FR Doc. 2022–15463 Filed 7–20–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31439; Amdt. No. 4018]

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 July 21, 2022. 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 July 21, 2022.

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, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

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 Airmen (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, airmen 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 July 8, 2022.

Thomas J. Nichols,

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

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

** * * Effective Upon Publication*

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
11–Aug–22 ...	PA	Clearfield	Clearfield-Lawrence	2/0679	5/31/22	This NOTAM, published in Docket No. 31437, Amdt No. 4016, TL 22–17, (87 FR 40091, July 6, 2022) is hereby rescinded in its entirety.
11–Aug–22 ...	OH	Youngstown/Warren	Youngstown/Warren Rgnl	2/1508	6/15/22	This NOTAM, published in Docket No. 31437, Amdt No. 4016, TL 22–17, (87 FR 40091, July 6, 2022) is hereby rescinded in its entirety.
11–Aug–22 ...	MS	Natchez	Hardy-Anders Fld/Natchez-Adams County.	2/3146	4/26/22	This NOTAM, published in Docket No. 31437, Amdt No. 4016, TL 22–17, (87 FR 40091, July 6, 2022) is hereby rescinded in its entirety.
11–Aug–22 ...	GA	Canton	Cherokee County Rgnl	2/5042	5/20/22	This NOTAM, published in Docket No. 31437, Amdt No. 4016, TL 22–17, (87 FR 40091, July 6, 2022) is hereby rescinded in its entirety.
11–Aug–22 ...	GA	Savannah	Savannah/Hilton Head Intl	2/6225	5/31/22	This NOTAM, published in Docket No. 31437, Amdt No. 4016, TL 22–17, (87 FR 40091, July 6, 2022) is hereby rescinded in its entirety.
11–Aug–22 ...	LA	New Iberia	Acadiana Rgnl	2/0592	6/21/22	ILS OR LOC RWY 35, Amdt 2.
11–Aug–22 ...	OH	Wauseon	Fulton County	2/0629	6/21/22	RNAV (GPS) RWY 27, Orig–B.
11–Aug–22 ...	OH	Wauseon	Fulton County	2/0630	6/21/22	RNAV (GPS) RWY 9, Orig–B.
11–Aug–22 ...	TN	Somerville	Fayette County	2/0721	6/23/22	RNAV (GPS) RWY 1, Orig–B.
11–Aug–22 ...	TN	Somerville	Fayette County	2/0722	6/23/22	RNAV (GPS) RWY 19, Amdt 2B.
11–Aug–22 ...	IA	Dubuque	Dubuque Rgnl	2/0875	6/21/22	Takeoff Minimums and Obstacle DP, Orig.
11–Aug–22 ...	PA	Pottstown	Heritage Fld	2/0883	6/27/22	VOR/DME–A, Amdt 4A.
11–Aug–22 ...	NY	Montauk	Montauk	2/1776	6/23/22	RNAV (GPS) RWY 24, Amdt 1B.
11–Aug–22 ...	MI	Fremont	Fremont Muni	2/1779	6/21/22	RNAV (GPS) RWY 1, Amdt 1C.
11–Aug–22 ...	MI	Fremont	Fremont Muni	2/1780	6/21/22	RNAV (GPS) RWY 19, Amdt 1D.
11–Aug–22 ...	NY	Montauk	Montauk	2/1812	6/23/22	RNAV (GPS) RWY 6, Orig–B.
11–Aug–22 ...	IN	Gary	Gary/Chicago Intl	2/1864	6/23/22	RNAV (GPS) RWY 2, Orig.
11–Aug–22 ...	KS	Hays	Hays Rgnl	2/1919	6/22/22	RNAV (GPS) RWY 22, Orig–A.
11–Aug–22 ...	IN	Richmond	Richmond Muni	2/1953	4/25/22	Takeoff Minimums and Obstacle DP, Orig.
11–Aug–22 ...	OH	Mount Vernon	Knox County	2/2005	6/22/22	VOR–A, Amdt 8A.
11–Aug–22 ...	PA	State College	University Park	2/2108	6/23/22	RNAV (GPS) RWY 6, Amdt 2A.
11–Aug–22 ...	MN	Winona	Winona Muni-Max Conrad Fld	2/2356	6/23/22	ILS Y OR LOC Y RWY 30, Orig–A.
11–Aug–22 ...	MO	West Plains	West Plains Rgnl	2/2391	6/23/22	RNAV (GPS) RWY 18, Amdt 1.
11–Aug–22 ...	MO	West Plains	West Plains Rgnl	2/2394	6/23/22	RNAV (GPS) RWY 36, Amdt 1.
11–Aug–22 ...	ND	Linton	Linton Muni	2/2431	6/23/22	RNAV (GPS) RWY 9, Orig–B.
11–Aug–22 ...	ME	Bar Harbor	Hancock County/Bar Harbor ..	2/2539	6/23/22	ILS OR LOC RWY 22, Amdt 6E.
11–Aug–22 ...	PA	Pottstown	Heritage Fld	2/3289	6/27/22	RNAV (GPS)-A, Orig.
11–Aug–22 ...	LA	Alexandria	Alexandria Intl	2/3852	6/24/22	ILS OR LOC RWY 14, Amdt 1B.
11–Aug–22 ...	LA	Alexandria	Alexandria Intl	2/3854	6/24/22	VOR RWY 14, Orig–E.
11–Aug–22 ...	OK	Idabel	Mc Curtain County Rgnl	2/4507	6/22/22	RNAV (GPS) RWY 20, Amdt 1.
11–Aug–22 ...	MO	Mosby	Midwest Ntl Air Center	2/4515	5/16/22	ILS OR LOC/DME RWY 18, Orig–B.
11–Aug–22 ...	MS	Tupelo	Tupelo Rgnl	2/6171	6/27/22	COPTER VOR 023, Orig–B.
11–Aug–22 ...	AZ	Phoenix	Phoenix-Mesa Gateway	2/6266	4/25/22	RNAV (GPS) RWY 30R, Orig.
11–Aug–22 ...	SC	Columbia	Columbia Metro	2/6269	6/21/22	RNAV (GPS) RWY 23, Amdt 2C.
11–Aug–22 ...	TX	Lampasas	Lampasas	2/6638	5/6/22	VOR–A, Amdt 4A.
11–Aug–22 ...	PA	Clearfield	Clearfield-Lawrence	2/6940	7/5/22	RNAV (GPS) RWY 30, Amdt 1C.
11–Aug–22 ...	UT	Nephi	Nephi Muni	2/7023	6/28/22	RNAV (GPS) RWY 17, Orig–A.
11–Aug–22 ...	UT	Nephi	Nephi Muni	2/7032	6/28/22	RNAV (GPS) RWY 35, Orig–B.
11–Aug–22 ...	CO	Denver	Colorado Air And Space Port	2/7610	7/5/22	Takeoff Minimums and Obstacle DP, Amdt 3A.
11–Aug–22 ...	TX	Sulphur Springs	Sulphur Springs Muni	2/8451	6/23/22	RNAV (GPS) RWY 1, Amdt 1C.
11–Aug–22 ...	TX	Sulphur Springs	Sulphur Springs Muni	2/8452	6/23/22	RNAV (GPS) RWY 19, Orig–C.
11–Aug–22 ...	TX	Sulphur Springs	Sulphur Springs Muni	2/8454	6/23/22	VOR–B, Amdt 7.
11–Aug–22 ...	CO	La Junta	La Junta Muni	2/8750	6/28/22	RNAV (GPS) RWY 8, Amdt 1.
11–Aug–22 ...	VA	Staunton/Waynesboro/Harrisonburg.	Shenandoah Valley Rgnl	2/9070	6/27/22	RNAV (GPS) RWY 23, Orig–A.
11–Aug–22 ...	VA	Staunton/Waynesboro/Harrisonburg.	Shenandoah Valley Rgnl	2/9075	6/27/22	Takeoff Minimums and Obstacle DP, Amdt 6.
11–Aug–22 ...	RI	Pawtucket	North Central State	2/9234	6/28/22	RNAV (GPS) RWY 5, Amdt 1B.
11–Aug–22 ...	OH	Bryan	Williams County	2/9302	6/22/22	RNAV (GPS) RWY 25, Amdt 1A.
11–Aug–22 ...	OH	Bryan	Williams County	2/9304	6/22/22	RNAV (GPS) RWY 7, Amdt 1A.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
11–Aug–22 ...	CT	Danbury	Danbury Muni	2/9319	6/23/22	RNAV (GPS)–A, Orig–A.
11–Aug–22 ...	CA	Santa Barbara	Santa Barbara Muni	2/9350	6/28/22	ILS OR LOC RWY 7, Amdt 5B.
11–Aug–22 ...	CA	Santa Barbara	Santa Barbara Muni	2/9351	6/28/22	RNAV (GPS) RWY 7, Orig–B.
11–Aug–22 ...	CA	Santa Barbara	Santa Barbara Muni	2/9352	6/28/22	VOR OR GPS RWY 25, Amdt 6C.
11–Aug–22 ...	VA	Staunton/Waynesboro/Harrisonburg.	Shenandoah Valley Rgnl	2/9439	6/27/22	ILS OR LOC RWY 5, Amdt 9A.
11–Aug–22 ...	MS	Holly Springs	Holly Springs-Marshall County	2/9499	6/24/22	RNAV (GPS) RWY 18, Orig–A.
11–Aug–22 ...	MS	Holly Springs	Holly Springs-Marshall County	2/9500	6/24/22	RNAV (GPS) RWY 36, Orig.
11–Aug–22 ...	CO	La Junta	La Junta Muni	2/9646	6/28/22	RNAV (GPS) RWY 26, Amdt 1.
11–Aug–22 ...	GA	Macon	Macon Downtown	2/9677	6/27/22	RNAV (GPS) RWY 28, Amdt 2A.
11–Aug–22 ...	ME	Bar Harbor	Hancock County/Bar Harbor ..	2/9698	6/23/22	RNAV (GPS) RWY 4, Amdt 1C.
11–Aug–22 ...	ME	Bar Harbor	Hancock County/Bar Harbor ..	2/9700	6/23/22	RNAV (GPS) RWY 22, Amdt 1B.

[FR Doc. 2022–15464 Filed 7–20–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0525]

RIN 1625–AA00

Safety Zone; Fireworks Display, Boothbay Harbor, Boothbay, ME

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a fireworks display on the navigable waters of the Boothbay Harbor in the vicinity of McFarland Island, Boothbay, ME. The safety zone is needed to protect personnel, spectators, and vessels from potential hazards created by a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Northern New England.

DATES: This rule is effective from 9 p.m. on Thursday, July 21, 2022, through 11 p.m. on Friday, July 22, 2022. The rule will only be subject to enforcement from 9 p.m. through 11 p.m. on July 21, 2022, unless the event is delayed because of weather conditions in which case it may be subject to enforcement those same hours on July 22, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0525 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Marine Science Technician Zachary Wetzel, Waterways Management Division at Coast Guard Sector Northern New England, telephone 207–347–5003, email *Zachary.r.Wetzel@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The Coast Guard was not provided the final details for this event until June 8, 2022, and therefore, insufficient time exists to execute the full NPRM process. Waiting for a full comment period to run would inhibit the Coast Guard's ability to keep the public safe from the hazards associated with a nighttime maritime fireworks display and the ability to minimize the impact to vessel traffic on the navigable waterway.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the same reasons discussed in the preceding paragraph.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Northern New England (COTP) has determined that potential hazards associated with firework display starting July 21, 2022, will be a safety concern for anyone within a 200-yard radius or the launch location. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a temporary safety zone on the navigable waters of the Boothbay Harbor in the vicinity of McFarland Island, Boothbay, ME, during a fireworks display from a barge. The event is scheduled to take place between 9 p.m. and 11 p.m. on July 21, 2022, unless the event is delayed because of weather conditions in which case it may take place between 9 p.m. and 11 p.m. on July 22, 2022. The safety zone will extend 200 yards around the barge, which will be anchored in approximate position latitude 43°50′46.91″ N, longitude 069°37′30.73″ W. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the firework display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and

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

This regulatory action determination is based on the size and location of the safety zone. The safety zone will only be of limited duration and will allow vessels to transit in waters directly adjacent to this safety zone, minimizing any adverse impact. Additionally, maritime advisories will be posted in the Local Notice to Mariners and will be broadcast throughout the duration of the enforcement period.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 2 hours that will prohibit entry within 200 yards of a fireworks barge in Boothbay Harbor in the vicinity of McFarland Island in Boothbay Harbor, Maine. 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 record keeping requirements, 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; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T01–0525 to read as follows:

§ 165.T01–0525 Safety Zone; Fireworks Display, Boothbay Harbor; Boothbay, ME.

(a) *Location.* The following area is a safety zone: all navigable waters, from surface to bottom, of Boothbay Harbor, Boothbay, ME, within a 200-yard radius of position: 43°50′46.91″ N, 069°37′30.73″ 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 Captain of the Port Northern New England (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety

zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM marine channel 16 or by contacting the Coast Guard Sector Northern New England Command Center at 207–741–5465. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) This section is effective from 9 p.m. on Thursday, July 21, 2022, through 11 p.m. on Friday, July 22, 2022. The rule will only be subject to enforcement from 9 p.m. through 11 p.m. on July 21, 2022, unless the event is delayed because of weather conditions in which case it may be subject to enforcement those same hours on July 22, 2022.

Dated: July 18, 2022.

A.E. Florentino,

Captain, U.S. Coast Guard, Captain of the Port Northern New England.

[FR Doc. 2022–15576 Filed 7–20–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[EPA–R06–OAR–2020–0086; FRL–8847–02–R6]

National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Oklahoma Department of Environmental Quality (ODEQ) has submitted updated regulations for receiving delegation and approval of its program for the implementation and enforcement of certain National Emission Standards for Hazardous Air Pollutants (NESHAP) for all sources (both part 70 and non-part 70 sources), as provided for under previously approved delegation mechanisms. The updated state regulations incorporate by reference certain NESHAP promulgated by the Environmental Protection Agency (EPA) at parts 61 and 63, as they existed through June 30, 2019. The EPA is providing notice that it is taking final action to approve the delegation of certain NESHAP to ODEQ. The proposed delegation of authority under this action applies to sources located in certain areas of Indian country as discussed herein.

DATES: This rule is effective on August 22, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2020–0086. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Barrett, EPA Region 6 Office, ARPE, (214) 665–7227; *barrett.richard@epa.gov.*

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

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I. Background

The background for this action is discussed in detail in our August 30, 2021, proposal (86 FR 48363). In that document we proposed to approve a request from the Oklahoma Department of Environmental Quality (ODEQ) to update its existing NESHAP regulations for receiving delegation and approval of its program for the implementation and enforcement of certain National Emission Standards for Hazardous Air Pollutants (NESHAP) for all sources (both part 70 and non-part 70 sources), as provided for under previously approved delegation mechanisms. We received one citizen public comment and one anonymous public comment on the proposed rulemaking action. The comments are posted to the docket (EPA–R06–OAR–2020–0086). These two comments are considered positive and within the scope of this specific rulemaking action. We thank the two commenters for their input and acknowledge their participation in the process. Since these comments are not adverse to the specific action which EPA proposed, the EPA will not be responding further to these comments or making any changes to our proposed rulemaking.

II. What does this action do?

The EPA is providing notice that it is taking final action to approve ODEQ's request updating the delegation of certain NESHAP. With this delegation, ODEQ has the primary responsibility to implement and enforce the delegated standards. *See* sections VI and VII, below, for a discussion of which standards are being delegated and which are not being delegated.

III. What is the authority for delegation?

Section 112(l) of the Clean Air Act (CAA) and 40 CFR part 63, subpart E, authorize the EPA to delegate authority for the implementation and enforcement of emission standards for hazardous air pollutants to a State or local agency that satisfies the statutory and regulatory requirements in subpart E. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63.

IV. What criteria must Oklahoma's program meet to be approved?

Section 112(l)(5) of the CAA requires the EPA to disapprove any program submitted by a State for the delegation of NESHAP standards if the EPA determines that:

(A) the authorities contained in the program are not adequate to assure compliance by the sources within the State with respect to each applicable standard, regulation, or requirement established under section 112;

(B) adequate authority does not exist, or adequate resources are not available, to implement the program;

(C) the schedule for implementing the program and assuring compliance by affected sources is not sufficiently expeditious; or

(D) the program is otherwise not in compliance with the guidance issued by the EPA under section 112(l)(2) or is not likely to satisfy, in whole or in part, the objectives of the CAA.

In carrying out its responsibilities under section 112(l), the EPA promulgated regulations at 40 CFR part 63, subpart E setting forth criteria for the approval of submitted programs. For example, in order to obtain approval of a program to implement and enforce Federal section 112 rules as promulgated without changes (straight delegation) for part 70 sources, a State must demonstrate that it meets the criteria of 40 CFR 63.91(d). 40 CFR 63.91(d)(3) provides that interim or final Title V program approval will satisfy the criteria of 40 CFR 63.91(d).[1] The NESHAP delegation for Oklahoma, as it applies to both part 70 and non-part 70 sources, was most recently approved on October 22, 2018 (83 FR 53183).

V. How did ODEQ meet the NESHAP program approval criteria?

As to the NESHAP standards in 40 CFR parts 61 and 63, as part of its Title V submission ODEQ stated that it intended to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 into its regulations. This commitment applied to both existing and future standards as they applied to part 70 sources. The EPA's final interim approval of Oklahoma's Title V operating permits program delegated the authority to implement certain NESHAP, effective March 6, 1996 (61 FR 4220, February 5, 1996). On December 5, 2001, the EPA promulgated full approval of the State's operating permits program, effective November 30, 2001 (66 FR 63170). These interim and full Title V program approvals satisfy the up-front approval criteria of 40 CFR 63.91(d). Under 40 CFR 63.91(d)(2), once a State has satisfied up-front approval criteria, it needs only to reference the previous demonstration and reaffirm that it still meets the criteria for any subsequent submittals for delegation of the section 112 standards. ODEQ has affirmed that it still meets the up-front approval criteria. With respect to non-part 70 sources, the EPA has previously approved delegation of NESHAP authorities to ODEQ after finding adequate authorities to implement and enforce the NESHAP for such sources. *See* 66 FR 1584 (January 9, 2001).

[1] Some NESHAP standards do not require a source to obtain a title V permit (*e.g.,* certain area sources that are exempt from the requirement to obtain a title V permit). For these non-title V sources, the EPA believes that the State must assure the EPA that it can implement and enforce the NESHAP for such sources. *See* 65 FR 55810, 55813 (Sept. 14, 2000). EPA previously approved Oklahoma's program to implement and enforce the NESHAP as they apply to non-part 70 sources. *See* 66 FR 1584 (Jan. 9, 2001).

VI. What is being delegated?

By letter dated December 23, 2019, ODEQ requested the EPA to update its existing NESHAP delegation. With certain exceptions noted in section VII of this document, Oklahoma's request included NESHAP in 40 CFR part 61 and 40 CFR part 63. ODEQ's request included newly incorporated NESHAP promulgated by the EPA and amendments to existing standards currently delegated, as amended between September 1, 2016, and June 30, 2018, as adopted by the State.

More recently, by letter dated March 23, 2021, the EPA received a request from ODEQ to update its existing NESHAP delegation. With certain exceptions noted in section VII of this document, ODEQ's request includes certain NESHAP in 40 CFR parts 61 and 63. ODEQ's request included newly incorporated NESHAP promulgated by the EPA and amendments to existing standards currently delegated, as amended between June 30, 2018, and June 30, 2019, as adopted by the State.

VII. What is not being delegated?

All authorities not affirmatively and expressly delegated by this action are not delegated. These include the following part 61 authorities listed below:

- 40 CFR part 61, subpart B (National Emission Standards for Radon Emissions from Underground Uranium Mines);
- 40 CFR part 61, subpart H (National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities);
- 40 CFR part 61, subpart I (National Emission Standards for Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H);
- 40 CFR part 61, subpart K (National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants);
- 40 CFR part 61, subpart Q (National Emission Standards for Radon Emissions from Department of Energy facilities);
- 40 CFR part 61, subpart R (National Emission Standards for Radon Emissions from Phosphogypsum Stacks);
- 40 CFR part 61, subpart T (National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings); and
- 40 CFR part 61, subpart W (National Emission Standards for Radon Emissions from Operating Mill Tailings).

In addition, the EPA regulations provide that we cannot delegate to a State any of the Category II Subpart A authorities set forth in 40 CFR 63.91(g)(2). These include the following provisions: § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. Also, some part 61 and part 63 standards have certain provisions that cannot be delegated to the States. Furthermore, no authorities are delegated that require rulemaking in the **Federal Register** to implement, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112. Finally, this action does not delegate any authority under section 112(r), the accidental release program.

All inquiries and requests concerning implementation and enforcement of the excluded standards in the State of Oklahoma should be directed to the EPA Region 6 Office.

The EPA is making a determination that the NESHAP program submitted by Oklahoma meets the applicable requirements of CAA section 112(l)(5) and 40 CFR part 63, subpart E.

VIII. How will statutory and regulatory interpretations be made?

In approving the NESHAP delegation, ODEQ will obtain concurrence from the EPA on any matter involving the interpretation of section 112 of the CAA or 40 CFR parts 61 and 63 to the extent that implementation or enforcement of these provisions have not been covered by prior EPA determinations or guidance.

IX. What authority does the EPA have?

We retain the right, as provided by CAA section 112(l)(7) and 40 CFR 63.90(d)(2), to enforce any applicable emission standard or requirement under section 112. In addition, the EPA may enforce any federally approved State rule, requirement, or program under 40 CFR 63.90(e) and 63.91(c)(1)(i). The EPA also has the authority to make certain decisions under the General Provisions (subpart A) of parts 61 and 63. We are delegating to the ODEQ some of these authorities, and retaining others, as explained in sections VI and VII above. In addition, the EPA may review and disapprove State determinations and subsequently require corrections. *See* 40 CFR 63.91(g)(1)(ii). The EPA also has

the authority to review ODEQ's implementation and enforcement of approved rules or programs and to withdraw approval if we find inadequate implementation or enforcement. *See* 40 CFR 63.96.

Furthermore, we retain any authority in an individual emission standard that may not be delegated according to provisions of the standard. Also, listed in footnote 2 of the part 63 delegation table at the end of this rule are the authorities that cannot be delegated to any State or local agency which we therefore retain.

Finally, we retain the authorities stated in the original delegation agreement. *See* ''Provisions for the Implementation and Enforcement of NSPS and NESHAP in Oklahoma,'' effective March 25, 1982, a copy of which is included in the docket for this action. A table of currently delegated NESHAP standards and the final updated NESHAP delegation may be found in the Technical Support Document (TSD) included in the docket for this action. The table also shows the authorities that cannot be delegated to any state or local agency.

X. What information must ODEQ provide to the EPA?

ODEQ must provide any additional compliance related information to EPA, Region 6, Office of Enforcement and Compliance Assurance within 45 days of a request under 40 CFR 63.96(a). In receiving delegation for specific General Provisions authorities, ODEQ must submit to EPA Region 6 on a semi-annual basis, copies of determinations issued under these authorities. *See* 40 CFR 63.91(g)(1)(ii). For part 63 standards, these determinations include: § 63.1, Applicability Determinations; § 63.6(e), Operation and Maintenance Requirements—Responsibility for Determining Compliance; § 63.6(f), Compliance with Non-Opacity Standards—Responsibility for Determining Compliance; § 63.6(h), Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance; § 63.7(c)(2)(i) and (d), Approval of Site-Specific Test Plans; § 63.7(e)(2)(i), Approval of Minor Alternatives to Test Methods; § 63.7(e)(2)(ii) and (f), Approval of Intermediate Alternatives to Test Methods; § 63.7(e)(iii), Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors; § 63.7(e)(2)(iv), (h)(2) and (3), Waiver of Performance Testing; § 63.8(c)(1) and (e)(1), Approval of Site-Specific Performance Evaluation (Monitoring) Test Plans; § 63.8(f), Approval of Minor Alternatives to Monitoring; § 63.8(f), Approval of Intermediate Alternatives to Monitoring; §§ 63.9 and 63.10, Approval of Adjustments to Time Periods for Submitting Reports; § 63.10(f), Approval of Minor Alternatives to Recordkeeping and Reporting; and § 63.7(a)(4), Extension of Performance Test Deadline.

XI. What is the EPA's oversight role?

The EPA oversees ODEQ's decisions to ensure the delegated authorities are being adequately implemented and enforced. We will integrate oversight of the delegated authorities into the existing mechanisms and resources for oversight currently in place. If, during oversight, we determine that ODEQ made decisions that decreased the stringency of the delegated standards, then ODEQ shall be required to take corrective actions and the source(s) affected by the decisions will be notified, as required by 40 CFR 63.91(g)(1)(ii) and (b). Our oversight authorities allow us to initiate withdrawal of our approval of the program or delegated rule if the corrective actions taken are insufficient. *See* 51 FR 20648 (June 6, 1986).

XII. Should sources submit notices to the EPA or ODEQ?

For the delegated NESHAP standards and authorities covered by this action, sources would submit all of the information required pursuant to the general provisions and the relevant subpart(s) of the delegated NESHAP (40 CFR parts 61 and 63) directly to the ODEQ at the following address: State of Oklahoma, Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, Oklahoma 73101–1677. The ODEQ is the primary point of contact with respect to delegated NESHAP. Sources do not need to send a copy to the EPA. The EPA Region 6 waives the requirement that notifications and reports for delegated standards be submitted to the EPA in addition to ODEQ in accordance with 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii).[2] For those standards and authorities not delegated as discussed above, sources must continue to submit all appropriate information to the EPA.

XIII. How will unchanged authorities be delegated to ODEQ in the future?

As stated in previous NESHAP delegation actions, the EPA has approved Oklahoma's mechanism of incorporation by reference of NESHAP standards into ODEQ regulations, as they apply to both part 70 and non-part 70 sources. *See, e.g.,* 61 FR 4224 (February 5, 1996) and 66 FR 1584 (January 9, 2001). Consistent with the EPA regulations and guidance,[3] ODEQ may request future updates to Oklahoma's NESHAP delegation by submitting a letter to the EPA that appropriately identifies the specific NESHAP which have been incorporated by reference into state regulations, reaffirms that it still meets up-front approval delegation criteria for part 70 sources, and demonstrates that ODEQ maintains adequate authorities and resources to implement and enforce the delegated NESHAP requirements for all sources. We will respond in writing to the request stating that the request for delegation is either granted or denied. A **Federal Register** action will be published to inform the public and affected sources of the updated delegation, indicate where source notifications and reports should be sent, and amend the relevant portions of the Code of Federal Regulations identifying which NESHAP standards have been delegated to the ODEQ.

XIV. Impact on Areas of Indian Country

As stated in the proposed action, following the U.S. Supreme Court decision in *McGirt* v. *Oklahoma,* 140 S. Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Pubic Law 109–59, 119 Stat. 1144, 1937 (August 10, 2005) (''SAFETEA''), to administer in certain areas of Indian country (as defined at 18 U.S.C. 1151) the State's environmental regulatory programs that were previously approved by the EPA outside of Indian country.[4] The State's request excluded certain areas of Indian country further described below.

On October 1, 2020, the EPA approved Oklahoma's SAFETEA request to administer all of the State's EPA-approved environmental regulatory programs, including the delegated portions of the NESHAP program, in the

[2] This waiver only extends to the submission of *copies* of notifications and reports; the EPA does not waive the requirements in delegated standards that require notifications and reports be submitted to an electronic database (*e.g.,* 40 CFR part 63, subpart HHHHHHH).

[3] *See* Harardous Air Pollutants: Amendments to the Approval of State Programs and Delegation of Federal Authorities, Final Rule (65 FR 55810, September 14, 2000); and ''Straight Delegation Issues Concerning Sections 111 and 112 Requirements and Title V,'' by John S. Seitz, Director of Air Qualirty Planning and Standards, EPA, dated December 10, 1993.

[4] A copy of the Governor's July 22, 2020 request can be found in the docket for this final rulemaking.

requested areas of Indian country.[5] As requested by Oklahoma, the EPA's approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively ''excluded Indian country lands'').

The EPA's approval under SAFETEA expressly provided that to the extent the EPA's prior approvals of Oklahoma's environmental programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA's approval of Oklahoma's SAFETEA request.[6] The approval also provided that future revisions or amendments to Oklahoma's approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).

As explained above, the EPA is approving an update to the Oklahoma NESHAP delegation. Consistent with the EPA's October 1, 2020 SAFETEA approval, Oklahoma's delegation of the NESHAP program will apply to all areas of Indian country within the State of Oklahoma, other than the excluded Indian country lands.[7]

XV. Final Action

The EPA is taking final action to approve an update to the Oklahoma NESHAP delegation that would provide ODEQ with the authority to implement and enforce certain newly incorporated NESHAP promulgated by the EPA, and amendments to existing standards currently delegated, as they existed though June 30, 2019. This final delegation to ODEQ extends to sources and activities located in certain areas of Indian country, as explained in section XIV above.

XVI. Environmental Justice Considerations

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 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.'' [8] The EPA is providing additional analysis of environmental justice associated with this action for the purpose of providing information to the public, not as a basis of our final action.

The EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within Oklahoma.[9] The EPA then compared the data to the national average for each of the demographic groups.[10] The results of the demographic analysis indicate that, for populations within Oklahoma, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is less than the national average (35 percent versus 40 percent). Within people of color, the percent of the population that is Black or African American alone is lower than the national average (7.8 percent versus 13.4 percent) and the percent of the population that is American Indian/Alaska Native is significantly higher than the national average (9.4 percent versus 1.3 percent). The percent of the population that is two or more races is higher than the national averages (6.3 percent versus 2.8 percent). The percent of people living below the poverty level in Oklahoma is higher than the national average (14.3 percent versus 11.4 percent). The percent of people over 25 with a high school diploma in Oklahoma is similar to the national average (88.6 percent versus 88.5 percent), while the percent with a bachelor's degree or higher is below the national average (26.1 percent versus 32.9 percent). These populations and others residing in Oklahoma may be vulnerable and subject to disproportionate impacts within the meaning of the executive order described above.

The authorities contained in the Oklahoma air program to implement and enforce Federal section 112 rules as promulgated, without changes for both part 70 and non-part 70 sources, are adequate to assure compliance by sources within the State with respect to each applicable standard, regulation, or requirement established under section 112. This final action approves the requests from the state to update its NESHAP delegation under section 112 of the CAA. Final approval of the updated NESHAP delegation is necessary for the State of Oklahoma to implement federal requirements that ensure control strategies and permitting that will achieve emissions reductions and contribute to reduced environmental and health impacts on those residing, working, attending school, or otherwise present in vulnerable communities in Oklahoma. This final rule is not anticipated to have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns because it should not result in or contribute to emissions increases in Oklahoma.

XVII. Statutory and Executive Order Reviews

Under the CAA, the Administrator has the authority to approve section 112(l) submissions that comply with the provisions of the Act and applicable Federal regulations. In reviewing section 112(l) submissions, the EPA's role is to approve state choices,

[5] A copy of EPA's October 1, 2020 approval can be found in the docket for this final rulemaking.

[6] EPA's prior approvals relating to Oklahoma's NESHAP delegation frequently noted that the NESHAP delegation was not approved to apply in areas of Indian country located in the State. *See, e.g.,* 83 FR 53183 (October 22, 2018). Such prior expressed limitations are superseded by the EPA's approval of Oklahoma's SAFETEA request.

[7] On December 22, 2021, the EPA proposed to withdraw and reconsider the October 1, 2020 SAFETEA approval. *See https://www.epa.gov/ok/proposed-withdrawal-and-reconsideration-and-supporting-information.* The EPA expects to have further discussions with tribal governments and the State of Oklahoma as part of this reconsideration. The EPA also notes that the October 1, 2020 approval is the subject of a pending challenge in federal court. *Pawnee Nation of Oklahoma* v. *Regan,* No. 20–9635 (10th Cir.). The EPA may make further changes to the approved Oklahoma NESHAP delegation to reflect the outcome of the proposed withdrawal and reconsideration of the October 1, 2020 SAFETEA approval.

[8] *https://www.epa.gov/environmentaljustice/learn-about-environmental-justice.*

[9] See the United States Census Bureau's QuickFacts on Oklahoma at *https://www.census.gov/quickfacts/fact/table/OK,US/PST045221.*

[10] See the United States Census Bureau's QuickFacts on Oklahoma at *https://www.census.gov/quickfacts/fact/table/OK,US/PST045221.*

provided that they meet the criteria and objectives of the CAA and of the EPA's implementing regulations. Accordingly, this final action merely approves the State's request as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This final action will apply to certain areas of Indian country as discussed above in section XIV, and therefore has tribal implications as specified in E.O. 13175 (65 FR 67249, November 9, 2000). However, this action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), on July 16, 2021, the EPA offered consultation to all 38 tribal governments whose lands are located within the exterior boundaries of the State of Oklahoma. One tribe requested consultation which was initiated on December 21, 2021, and concluded on July 6, 2022.

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

Under section 307(b)(1) of the Clean Air act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 61

Environmental protection, Administrative practice and procedure, Air pollution control, Arsenic, Benzene, Beryllium, Hazardous substances, Mercury, Intergovernmental relations, Reporting and recordkeeping requirements, Vinyl chloride.

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: July 15, 2022.

Dzung Ngo Kidd,

Acting Director, Air and Radiation Division, Region 6.

For the reasons stated in the preamble, 40 CFR parts 61 and 63 are amended as follows:

PART 61—NATIONAL EMISSON STANDARDS FOR HAZARDOUS AIR POLLUTANTS

■ 1. The authority citation for part 61 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Section 61.04 is amended by revising paragraphs (b)(38) and (c)(6)(iv) to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(38) State of Oklahoma, Oklahoma Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, OK 73101–1677. For a list of delegated standards for Oklahoma see paragraph (c)(6) of this section.

* * * * *

(c) * * *

(6) * * *

(iv) *Oklahoma.* The Oklahoma Department of Environmental Quality (ODED) has been delegated the following part 61 standards promulgated by EPA, as amended in the **Federal Register** through June 30, 2019. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (PART 61 STANDARDS) FOR OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

[Applies to sources located in certain areas of Indian Country]

Subpart	Source category	ODEQ [1]
A	General Provisions	X
B	Radon Emissions From Underground Uranium Mines	
C	Beryllium	X
D	Beryllium Rocket Motor Firing	X
E	Mercury	X
F	Vinyl Chloride	X

DELEGATION STATUS FOR NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (PART 61 STANDARDS) FOR OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY—Continued

[Applies to sources located in certain areas of Indian Country]

Subpart	Source category	ODEQ [1]
G	(Reserved)	
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities	
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.	
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X
K	Radionuclide Emissions From Elemental Phosphorus Plants	
L	Benzene Emissions From Coke By-Product Recovery Plants	X
M	Asbestos	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants	X
O	Inorganic Arsenic Emissions From Primary Copper Smelters	X
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities	X
Q	Radon Emissions From Department of Energy Facilities	
R	Radon Emissions From Phosphogypsum Stacks	
S	(Reserved)	
T	Radon Emissions From the Disposal of Uranium Mill Tailings	
U	(Reserved)	
V	Equipment Leaks (Fugitives Emission Sources)	X
W	Radon Emissions From Operating Mill Tailings	
X	(Reserved)	
Y	Benzene Emissions From Benzene Storage Vessels	X
Z–AA	(Reserved)	
BB	Benzene Emissions From Benzene Transfer Operations	X
CC–EE	(Reserved)	
FF	Benzene Waste Operations	X

[1] Program delegated to Oklahoma Department of Environmental Quality (ODEQ).

* * * * *

PART 63—NATIONAL EMISSON STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 3. The authority citation for part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 4. Section 63.99 is amended by revising paragraph (a)(37)(i) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(37) * * *

(i) The following table lists the specific part 63 standards that have been delegated unchanged to the Oklahoma Department of Environmental Quality for all sources. The ''X'' symbol is used to indicate each subpart that has been delegated. The delegations are subject to all of the conditions and limitations set forth in Federal law, regulations, policy, guidance, and determinations. Some authorities cannot be delegated and are retained by EPA. These include certain General Provisions authorities and specific parts of some standards. Any amendments made to these rules after June 30, 2019, are not delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF OKLAHOMA

[Applies to sources located in certain areas of Indian Country]

Subpart	Source category	ODEQ [1 2]
A	General Provisions	X
F	Hazardous Organic NESHAP (HON)—Synthetic Organic Chemical Manufacturing Industry (SOCMI)	X
G	HON—SOCMI Process Vents, Storage Vessels, Transfer Operations and Wastewater	X
H	HON—Equipment Leaks	X
I	HON—Certain Processes Negotiated Equipment Leak Regulation	X
J	Polyvinyl Chloride and Copolymers Production	[3]
K	(Reserved)	
L	Coke Oven Batteries	X
M	Perchloroethylene Dry Cleaning	X
N	Chromium Electroplating and Chromium Anodizing Tanks	X
O	Ethylene Oxide Sterilizers	X
P	(Reserved)	
Q	Industrial Process Cooling Towers	X
R	Gasoline Distribution	X
S	Pulp and Paper Industry	X
T	Halogenated Solvent Cleaning	X
U	Group I Polymers and Resins	X
V	(Reserved)	
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF OKLAHOMA—Continued

[Applies to sources located in certain areas of Indian Country]

Subpart	Source category	ODEQ[1 2]
X	Secondary Lead Smelting	X
Y	Marine Tank Vessel Loading	X
Z	(Reserved)	
AA	Phosphoric Acid Manufacturing Plants	X
BB	Phosphate Fertilizers Production Plants	X
CC	Petroleum Refineries	X
DD	Off-Site Waste and Recovery Operations	X
EE	Magnetic Tape Manufacturing	X
FF	(Reserved)	
GG	Aerospace Manufacturing and Rework Facilities	X
HH	Oil and Natural Gas Production Facilities	X
II	Shipbuilding and Ship Repair Facilities	X
JJ	Wood Furniture Manufacturing Operations	X
KK	Printing and Publishing Industry	X
LL	Primary Aluminum Reduction Plants	X
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfide, and Stand-Alone Semichemical Pulp Mills	X
NN	Wool Fiberglass Manufacturing at Area Sources	X
OO	Tanks-Level 1	X
PP	Containers	X
QQ	Surface Impoundments	X
RR	Individual Drain Systems	X
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	X
TT	Equipment Leaks—Control Level 1	X
UU	Equipment Leaks—Control Level 2 Standards	X
VV	Oil—Water Separators and Organic—Water Separators	X
WW	Storage Vessels (Tanks)—Control Level 2	X
XX	Ethylene Manufacturing Process Units Heat Exchange Systems and Waste Operations	X
YY	Generic Maximum Achievable Control Technology Standards	X
ZZ–BBB	(Reserved)	
CCC	Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration	X
DDD	Mineral Wool Production	X
EEE	Hazardous Waste Combustors	X
FFF	(Reserved)	
GGG	Pharmaceuticals Production	X
HHH	Natural Gas Transmission and Storage Facilities	X
III	Flexible Polyurethane Foam Production	X
JJJ	Group IV Polymers and Resins	X
KKK	(Reserved)	
LLL	Portland Cement Manufacturing	X
MMM	Pesticide Active Ingredient Production	X
NNN	Wool Fiberglass Manufacturing	X
OOO	Amino/Phenolic Resins	X
PPP	Polyether Polyols Production	X
QQQ	Primary Copper Smelting	X
RRR	Secondary Aluminum Production	X
SSS	(Reserved)	
TTT	Primary Lead Smelting	X
UUU	Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Plants	X
VVV	Publicly Owned Treatment Works (POTW)	X
WWW	(Reserved)	
XXX	Ferroalloys Production: Ferromanganese and Silicomanganese	X
AAAA	Municipal Solid Waste Landfills	X
CCCC	Nutritional Yeast Manufacturing	X
DDDD	Plywood and Composite Wood Products	[4] X
EEEE	Organic Liquids Distribution	X
FFFF	Misc. Organic Chemical Production and Processes (MON)	X
GGGG	Solvent Extraction for Vegetable Oil Production	X
HHHH	Wet Formed Fiberglass Mat Production	X
IIII	Auto & Light Duty Truck (Surface Coating)	X
JJJJ	Paper and other Web (Surface Coating)	X
KKKK	Metal Can (Surface Coating)	X
MMMM	Misc. Metal Parts and Products (Surface Coating)	X
NNNN	Surface Coating of Large Appliances	X
OOOO	Fabric Printing Coating and Dyeing	X
PPPP	Plastic Parts (Surface Coating)	X
QQQQ	Surface Coating of Wood Building Products	X
RRRR	Surface Coating of Metal Furniture	X
SSSS	Surface Coating for Metal Coil	X
TTTT	Leather Finishing Operations	X
UUUU	Cellulose Production Manufacture	X

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF OKLAHOMA—Continued

[Applies to sources located in certain areas of Indian Country]

Subpart	Source category	ODEQ[1] [2]
VVVV	Boat Manufacturing	X
WWWW	Reinforced Plastic Composites Production	X
XXXX	Tire Manufacturing	X
YYYY	Combustion Turbines	X
ZZZZ	Reciprocating Internal Combustion Engines (RICE)	X
AAAAA	Lime Manufacturing Plants	X
BBBBB	Semiconductor Manufacturing	X
CCCCC	Coke Ovens: Pushing, Quenching and Battery Stacks	X
DDDDD	Industrial/Commercial/Institutional Boilers and Process Heaters Major Sources	[5] X
EEEEE	Iron Foundries	X
FFFFF	Integrated Iron and Steel	X
GGGGG	Site Remediation	X
HHHHH	Miscellaneous Coating Manufacturing	X
IIIII	Mercury Cell Chlor-Alkali Plants	X
JJJJJ	Brick and Structural Clay Products Manufacturing	[6] X
KKKKK	Clay Ceramics Manufacturing	[6] X
LLLLL	Asphalt Roofing and Processing	X
MMMMM	Flexible Polyurethane Foam Fabrication Operation	X
NNNNN	Hydrochloric Acid Production, Fumed Silica Production	X
OOOOO	(Reserved)	
PPPPP	Engine Test Facilities	X
QQQQQ	Friction Products Manufacturing	X
RRRRR	Taconite Iron Ore Processing	X
SSSSS	Refractory Products Manufacture	X
TTTTT	Primary Magnesium Refining	X
UUUUU	Coal and Oil-Fired Electric Utility Steam Generating Units	[7] X
VVVVV	(Reserved)	
WWWWW	Hospital Ethylene Oxide Sterilizers	X
XXXXX	(Reserved)	
YYYYY	Electric Arc Furnace Steelmaking Area Sources	X
ZZZZZ	Iron and Steel Foundries Area Sources	X
AAAAAA	(Reserved)	
BBBBBB	Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities	X
CCCCCC	Gasoline Dispensing Facilities	X
DDDDDD	Polyvinyl Chloride and Copolymers Production Area Sources	X
EEEEEE	Primary Copper Smelting Area Sources	X
FFFFFF	Secondary Copper Smelting Area Sources	X
GGGGGG	Primary Nonferrous Metals Area Source: Zinc, Cadmium, and Beryllium	X
HHHHHH	Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources	X
IIIIII	(Reserved)	
JJJJJJ	Industrial, Commercial, and Institutional Boilers Area Sources	X
KKKKKK	(Reserved)	
LLLLLL	Acrylic and Modacrylic Fibers Production Area Sources	X
MMMMMM	Carbon Black Production Area Sources	X
NNNNNN	Chemical Manufacturing Area Sources: Chromium Compounds	X
OOOOOO	Flexible Polyurethane Foam Production and Fabrication Area Sources	X
PPPPPP	Lead Acid Battery Manufacturing Area Sources	X
QQQQQQ	Wood Preserving Area Sources	X
RRRRRR	Clay Ceramics Manufacturing Area Sources	X
SSSSSS	Glass Manufacturing Area Sources	X
TTTTTT	Secondary Nonferrous Metals Processing Area Sources	X
UUUUUU	(Reserved)	
VVVVVV	Chemical Manufacturing Area Sources	X
WWWWWW	Plating and Polishing Operations Area Sources	X
XXXXXX	Metal Fabrication and Finishing Area Sources	X
YYYYYY	Ferroalloys Production Facilities Area Sources	X
ZZZZZZ	Aluminum, Copper, and Other Nonferrous Foundries Area Sources	X
AAAAAAA	Asphalt Processing and Asphalt Roofing Manufacturing Area Sources	X
BBBBBBB	Chemical Preparation Industry Area Sources	X
CCCCCCC	Paints and Allied Products Manufacturing Area Sources	X
DDDDDDD	Prepared Feeds Areas Sources	X
EEEEEEE	Gold Mine Ore Processing and Production Area Sources	X
FFFFFFF–GGGGGGG.	(Reserved)	
HHHHHHH	Polyvinyl Chloride and Copolymers Production Major Sources	X

[1] Program delegated to Oklahoma Department of Environmental Quality (ODEQ).

[2] Authorities which may not be delegated include: § 63.6(g), Approval of Alternative Non-Opacity Emission Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting; and all authorities identified in the subparts (*e.g.,* under ''Delegation of Authority'') that cannot be delegated.

[3] The ODEQ has adopted this subpart unchanged and applied for delegation of the standard. The subpart was vacated and remanded to the EPA by the United States Court of Appeals for the District of Columbia Circuit. See, *Mossville Environmental Action Network* v. *EPA,* 370 F. 3d 1232 (D.C. Cir. 2004). Because of the D.C. Court's holding, this subpart is not delegated to ODEQ at this time.

[4] This subpart was issued a partial vacatur by the United States Court of Appeals for the District of Columbia Circuit. See 72 FR 61060 (October 29, 2007).

[5] Final rule. See 76 FR 15608 (March 21, 2011), as amended at 78 FR 7138 (January 31, 2013); 80 FR 72807 (November 20, 2015).

[6] Final promulgated rule adopted by the EPA. See 80 FR 65470 (October 26, 2015). Part 63 Subpart KKKKK was amended to correct minor typographical errors at 80 FR 75817 (December 4, 2015).

[7] Final Rule. See 77 FR 9304 (February 16, 2012), as amended 81 FR 20172 (April 6, 2016). Final Supplemental Finding that it is appropriate and necessary to regulate HAP emissions from Coal- and Oil-fired EUSGU Units. See 81 FR 24420 (April 25, 2016).

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[FR Doc. 2022–15517 Filed 7–20–22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0296; FRL–9924–01–OCSPP]

Various Fragrance Components; Exemptions From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance for residues of various fragrance components listed in unit II of this document when they are used as inert ingredients in antimicrobial pesticide formulations for use on food contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils with end-use concentration not to exceed 100 parts per million (ppm). Verto Solutions on behalf of The Clorox Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting the establishment of such exemptions from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of various fragrance components.

DATES: This regulation is effective July 21, 2022. Objections and requests for hearings must be received on or before September 19, 2022, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0296, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0296 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before September 19, 2022. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2020–0296, by one of the following methods:

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

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

II. Petition for Exemption

In the **Federal Register** of June 24, 2020 (85 FR 37807) (FRL–10010–82), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11018) by Verto Solutions on behalf of The Clorox Company, 4900 Johnson Dr., Pleasanton, CA 94588. The petition requested that 40 CFR 180.940(a) be amended by

establishing an exemption from the requirement of a tolerance for residues of acetaldehyde ethyl cis- 3-hexenyl acetal (CAS Reg. No. 28069–74–1), (tri-)acetin (CAS Reg. No. 102–76–1), acetophenone (CAS Reg. No. 98–86–2), allyl alpha-ionone (CAS Reg. No. 79–78–7), benzaldehyde (CAS Reg. No. 100–52–7), benzyl alcohol (CAS Reg. No. 100–51–6), benzyl butyrate (CAS Reg. No. 103–37–7), benzyl isobutyrate (CAS Reg. No. 103–28–6), benzyl propionate (CAS Reg. No. 122–63–4), carvacrol (CAS Reg. No. 499–75–2), cinnamaldehyde (CAS Reg. No. 104–55–2), cinnamyl alcohol (CAS Reg. No. 104–54–1), cuminaldehyde (CAS Reg. No. 122–03–2), diethyl malonate (CAS Reg. No. 105–53–3), 1,1-diethoxy-3,7-dimethylocta-2,6-diene (CAS Reg. No. 7492–66–2), dihydro-beta-ionone (CAS Reg. No. 17283–81–7), dihydrocarvyl acetate (CAS Reg. No. 20777–49–5), ethyl acetoacetate (CAS Reg. No. 141–97–9), ethyl benzoate (CAS Reg. No. 93–89–0), ethylene brassylate (CAS Reg. No. 105–95–3), ethyl salicylate (CAS Reg. No. 118–61–6), 4-formy-l-2-methoxyphenyl 2- methylpropanoate; vanillin isobutyrate (CAS Reg. No. 20665–85–4), hydroxycitronellal (CAS Reg. No. 107–75–5), hydroxycitronellol (CAS Reg. No. 107–74–4), 4-(p-hydroxyphenyl)-2- butanone (CAS Reg. No. 5471–51–2), p-methoxybenzaldehyde (CAS Reg. No. 123–11–5), 2-methoxy-4- propylphenol (CAS Reg. No. 2785–87–7), 4′-methylacetophenone (CAS Reg. No. 122–00–9), alpha-methylbenzyl acetate (CAS Reg. No. 93–92–5), alpha-methylbenzyl alcohol (CAS Reg. No. 98–85–1), methyl benzoate (CAS Reg. No. 93–58–3), alpha-methylcinnamaldehyde (CAS Reg. No. 101–39–3), methyl cinnamate (CAS Reg. No. 103–26–4), 5-methyl-2-hepten-4-one (CAS Reg. No. 81925–81–7), alpha-iso-methylionone (CAS Reg. No. 127–51–5), methyl salicylate (CAS Reg. No. 119–36–8), cis-6-nonenal (CAS Reg. No. 2277–19–2), cis-6-nonen-1-ol (CAS Reg. No. 35854–86–5), octanal dimethyl acetal (CAS Reg. No. 10022–28–3), phenethyl acetate (CAS Reg. No. 103–45–7), phenethyl alcohol (CAS Reg. No. 60–12–8), phenethyl isobutyrate (CAS Reg. No. 103–48–0), phenethyl phenylacetate (CAS Reg. No. 102–20–5), phenylacetaldehyde dimethyl acetal (CAS Reg. No. 101–48–4), 3-phenyl-1-propanol (CAS Reg. No. 122–97–4), 1-(2,6,6-trimethylcyclohexa-1,3- dienyl)-2-buten-1-one (CAS Reg. No. 23696–85–7), delta-1-(2,6,6-trimethyl- 3-cyclohexen-1-yl)-2- buten-1-one (CAS Reg. No. 57378–68–4), triethyl citrate (CAS Reg. No. 77–93–0), thiogeraniol (CAS Reg. No. 39067–80–6), thymol (CAS Reg. No. 89–83–8), vanillin (CAS Reg. No. 121–33–5), veratraldehyde (CAS Reg. No. 120–14–9) when used as an inert ingredient fragrance component in pesticide formulations applied to food contact surfaces in public eating places, dairy processing equipment, and food processing equipment with end-use concentrations not to exceed 100 ppm. That document referenced a summary of the petition prepared by Verto Solutions on behalf of The Clorox Company, the petitioner, which is available in the docket, *https://www.regulations.gov/docket/EPA-HQ-OPP-2020-0296*. There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

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

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no harm to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received for the various fragrance components are discussed in this unit.

The Agency assessed these fragrance components via the Threshold of Toxicological Concern (TTC) approach as outlined by the European Food Safety Authority (EFSA) in their 2019 guidance document on the use of TTC in food safety assessment. Information regarding the database of studies and chemicals used to derive TTCs are reviewed therein. The TTC approach has been used by the Joint Expert Committee on

Food Additives of the U.N.'s Food and Agriculture Organization and the World Health Organization, the former Scientific Committee on Food of the European Commission, the European Medicines Agency, and EFSA.

Information from JECFA reports as well as predictive toxicology using the OECD QSAR Toolbox was used to confirm that the fragrances listed in Unit II have low carcinogenic potential and are thus good candidates for the application of the TTC method. Although 13 chemicals had carcinogenicity alerts, JECFA concluded and EPA concurs that all fragrances listed in unit II have low carcinogenic potential, based on *in vitro* and/or *in vivo* genotoxicity studies available. Therefore, the TTC method can be applied to these fragrances.

TTCs are derived from a conservative and rigorous approach developed by Munro and Kroes to establish generic threshold values for human exposure at which a very low probability of adverse effects is likely. By comparing a range of compounds by Cramer Class (classes I, II, and III) and NOEL (no-observed-effect-level), fifth percentile NOELs were established for each Cramer Class as ''Human Exposure Thresholds''. These values were 3, 0.91 and 0.15 mg/kg/day for classes I, II, and III, respectively.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/overview-risk-assessment-pesticide-program.*

The human exposure threshold value for threshold (*i.e.,* non-cancer) risks is based upon Cramer structural class. In the case of the fragrance components listed above, all the substances included are in the Cramer Class I category, which is defined as chemicals of simple structure and efficient modes of metabolism, suggesting low oral toxicity.

Therefore, the NOEL of 3 mg/kg/day is selected as the point of departure for all exposure scenarios assessed (chronic dietary, incidental oral, dermal and inhalation exposures).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Dietary exposure (food and drinking water) may occur from the existing (non-food) and proposed uses of fragrance components listed in unit II (*e.g.,* eating foods treated with pesticide formulations containing these fragrances, and drinking water exposures). In evaluating dietary exposure to each of the fragrance components listed in Unit II, EPA considered exposure under the proposed tolerance exemptions at a concentration not to exceed 100 ppm for each of the fragrance components listed in Unit II. as well as any other sources of dietary exposure. EPA assessed dietary exposures from various fragrance components in food as follows:

The dietary assessment for food contact sanitizer solutions calculated the Daily Dietary Dose (DDD) and the Estimated Daily Intake (EDI). The assessment considered: Application rates, residual solution or quantity of solution remaining on the treated surface without rinsing with potable water, surface area of the treated surface which comes into contact with food, pesticide migration fraction, and body weight. These assumptions are based on Food and Drug Administration (FDA) guidelines.

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for various fragrance components a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compound. These values were directly entered into the dietary exposure model.

3. *Residential exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables). The fragrance components listed in Unit II may be used as inert ingredients in products that are registered for specific uses that may result in residential exposure, such as pesticides used in and around the home. The Agency conducted a conservative assessment of potential residential exposure by assessing various fragrance components in disinfectant-type uses (indoor scenarios). The Agency's assessment of adult residential exposure combines high-end dermal and inhalation handler exposure from indoor hard surface, wiping and aerosol spray. The Agency's assessment of children's residential exposure includes total post-application exposures associated with total exposures associated with contact with treated indoor surfaces (dermal and hand-to-mouth exposures).

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not made a common mechanism of toxicity finding as to these fragrance chemicals listed in unit II and any other substances, and these fragrance chemicals do not appear to produce toxic metabolites produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that these fragrance chemicals listed in unit II have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

FFDCA Section 408(b)(2)(C) provides that EPA shall retain an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure

unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor. The FQPA SF has been reduced to 1X in this risk assessment because clear NOELs and LOELs were established in the studies analyzed by Munro et al 1996 (which included developmental and reproductive toxicity studies), maternal and developmental-specific 5th percentile NOAELs calculated by van Ravenzwaay et al 2011 indicate low potential for offspring susceptibility, and the conservative assumptions made in the exposure assessment are unlikely to underestimate risk.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute aggregate risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effects resulting from a single oral exposure were identified and no acute dietary endpoint were selected for any of the fragrance components. Therefore, the fragrance components listed in Unit II are not expected to pose an acute risk.

2. *Short-term aggregate risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). For residential handler short-term exposure scenarios, MOEs ranged from 140 to 2,500, while residential post-application exposure scenarios MOEs ranged from 380 to 7,400. These MOEs are greater than the LOC of 100 and therefore are not of concern. The short-term aggregate MOE is 109 for adults and 135 for children, which are greater than the LOC of 100 and therefore are not of concern.

3. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, the fragrance components listed in Unit II are not currently used as an inert ingredient in pesticide products that are registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for various fragrance components.

4. *Chronic aggregate risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to the fragrance components listed in Unit II from food and water will utilize 19% of the chronic PAD (cPAD) for the U.S. population and 48% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Chronic residential exposure to residues of benoxacor is not expected. Therefore, the chronic aggregate risk is equal to the chronic dietary exposure for children 1 to 2 years old (48% of the PAD).

5. *Aggregate cancer risk for U.S. population.* There is low concern for genotoxicity/carcinogenicity in humans for the fragrance components listed in Unit II of this document. Therefore, the assessment under the TTC value for non-cancer risks is protective for all risks, including carcinogenicity.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to residues of the fragrance components listed in Unit II.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for fragrances listed in unit II of this document in or on any food commodities. EPA is establishing a limitation on the amount of the fragrances listed in unit II that may be used in antimicrobial pesticide formulations. This limitations will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide formulation for food use that exceeds 100ppm of fragrances listed in unit II in the final pesticide formulation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nation Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for the fragrance components listed in Unit II.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.940(a) for acetaldehyde ethyl cis- 3-hexenyl acetal (CAS Reg. No. 28069–74–1), (tri-)acetin (CAS Reg. No. 102–76–1), acetophenone (CAS Reg. No. 98–86–2), allyl alpha-ionone (CAS Reg. No. 79–78–7), benzaldehyde (CAS Reg. No. 100–52–7), benzyl alcohol (CAS Reg. No. 100–51–6), benzyl butyrate (CAS Reg. No. 103–37–7), benzyl isobutyrate (CAS Reg. No. 103–28–6), benzyl propionate (CAS Reg. No. 122–63–4), carvacrol (CAS Reg. No. 499–75–2), cinnamic aldehyde (cinnamaldehyde) (CAS Reg. No. 104–55–2), cinnamic alcohol (cinnamyl alcohol) (CAS Reg. No. 104–54–1), cuminaldehyde (CAS Reg. No. 122–03–2), diethyl malonate (CAS Reg. No. 105–53–3), 1,1-diethoxy-3,7- dimethylocta-2,6-diene (CAS Reg. No. 7492–66–2), dihydro-beta-ionone (CAS Reg. No. 17283–81–7), dihydrocarvyl acetate (CAS Reg. No. 20777–49–5), butanoic acid, 3-oxo-, ethyl ester (ethyl acetoacetate) (CAS Reg. No. 141–97–9),

benzoic acid, ethyl ester (ethyl benzoate) (CAS Reg. No. 93–89–0), ethylene brassylate (CAS Reg. No. 105–95–3), ethyl salicylate (CAS Reg. No. 118–61–6), propanoic acid, 2-methyl-, 4-formyl-2-methoxyphenyl ester (4-formyl-2- methoxyphenyl 2-methylpropanoate; vanillin isobutyrate) (CAS Reg. No. 20665–85–4), hydroxycitronellal (CAS Reg. No. 107–75–5), hydroxycitronellol (CAS Reg. No. 107–74–4), 4-(p-hydroxyphenyl)-2-butanone (CAS Reg. No. 5471–51–2), benzaldehyde, 4-methoxy- (p-methoxybenzaldehyde) (CAS Reg. No. 123–11–5), 2-methoxy-4- propylphenol (CAS Reg. No. 2785–87–7), 4′-methylacetophenone (CAS Reg. No. 122–00–9), benzenemethanol, alpha-methyl-, 1-acetate (alpha-methylbenzyl acetate) (CAS Reg. No. 93–92–5), alpha-methylbenzyl alcohol (CAS Reg. No. 98–85–1), methyl benzoate (CAS Reg. No. 93–58–3), alpha-methylcinnamaldehyde (CAS Reg. No. 101–39–3), methyl cinnamate (CAS Reg. No. 103–26–4), 2-hepten-4-one, 5-methyl- (5-methyl-2-hepten-4- one) (CAS Reg. No. 81925–81–7), 3-buten-2-one, 3-methyl-4-(2,6,6-trimethyl-2-cyclohexen-1-yl)- (alpha-iso-methylionone) (CAS Reg. No. 127–51–5), methyl salicylate (CAS Reg. No. 119–36–8), 6-nonenal, (6Z)- (cis-6-nonenal) (CAS Reg. No. 2277–19–2), cis-6-nonen-1-ol (CAS Reg. No. 35854–86–5), octanal dimethyl acetal (CAS Reg. No. 10022–28–3), phenethyl acetate (CAS Reg. No. 103–45–7), phenyl ethyl alcohol (phenethyl alcohol) (CAS Reg. No. 60–12–8), phenethyl isobutyrate (CAS Reg. No. 103–48–0), phenethyl phenylacetate (CAS Reg. No. 102–20–5), phenylacetaldehyde dimethyl acetal (CAS Reg. No. 101–48–4), 3-phenyl-1-propanol (CAS Reg. No. 122–97–4), 2-buten-1-one, 1-(2,6,6-trimethyl-1,3-cyclohexadien-1-yl)- (1-(2,6,6-trimethylcyclohexa-1,3- dienyl)-2-buten-1-one (CAS Reg. No. 23696–85–7), delta-1-(2,6,6-trimethyl- 3-cyclohexen-1-yl)-2-buten-1-one (CAS Reg. No. 57378–68–4), triethyl citrate (CAS Reg. No. 77–93–0), thiogeraniol (CAS Reg. No. 39067–80–6), thymol (8CA) (thymol) (CAS Reg. No. 89–83–8), vanillin (CAS Reg. No. 121–33–5), veratraldehyde (CAS Reg. No. 120–14–9) when used as an inert ingredient (fragrance components) in pesticide formulations applied to food contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils with end-use concentration not to exceed 100 ppm.

VII. Statutory and Executive Order Reviews

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

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

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

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 8, 2022.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICALS RESIDUES IN FOOD

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

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

■ 2. Section 180.940 is amended by adding in alphabetical order the following inert ingredients to table 1 to paragraph (a):

■ a. acetaldehyde ethyl cis-3-hexenyl acetal
■ b. Acetophenone
■ c. allyl alpha-ionone
■ d. Benzaldehyde
■ e. benzyl alcohol
■ f. benzyl butyrate
■ g. benzyl isobutyrate
■ h. benzaldehyde, 4-methoxy-
■ i. benzenemethanol, alpha-methyl-, 1-acetate
■ j. benzoic acid, ethyl ester
■ k. butanoic acid, 3-oxo-, ethyl ester
■ l. 2-buten-1-one, 1-(2,6,6-trimethyl-1,3-cyclohexadien-1-yl)-
■ m. 3-buten-2-one, 3-methyl-4-(2,6,6-trimethyl-2-cyclohexen-1-yl)-
■ n. Carvacrol
■ o. cinnamic aldehyde

■ p. cinnamic alcohol
■ q. Cuminaldehyde
■ r. diethyl malonate
■ s. 1,1-diethoxy-3,7-dimethylocta-2,6-diene
■ t. dihydro-beta-ionone
■ u. dihydrocarvyl acetate
■ v. ethylene brassylate
■ w. ethyl salicylate
■ x. glyceryl triacetate
■ y. 2-hepten-4-one, 5-methyl-
■ z. Hydroxycitronellal
■ aa. Hydroxycitronellol
■ bb. 4-(p-hydroxyphenyl)-2-butanone
■ cc. 2-methoxy-4-propylphenol
■ dd. methyl benzoate
■ ee. 4′-methylacetophenone
■ ff. alpha-methylbenzyl alcohol
■ gg. alpha-methylcinnamaldehyde
■ hh. methyl cinnamate
■ ii. methyl salicylate
■ jj. 6-nonenal, (6Z)-
■ kk. cis-6-nonen-1-ol
■ ll. octanal dimethyl acetal
■ mm. phenethyl acetate
■ nn. phenyl ethyl alcohol
■ oo. phenethyl isobutyrate
■ pp. phenethyl phenylacetate
■ qq. phenylacetaldehyde dimethyl acetal
■ rr. 3-phenyl-1-propanol
■ ss. propanoic acid, 2-methyl-, 4-formyl-2-methoxyphenyl ester
■ tt. triethyl citrate
■ uu. delta-1-(2,6,6-trimethyl-3-cyclohexen-1-yl)-2-buten-1-
■ vv. Thiogeraniol
■ ww. thymol (8CA)
■ xx. Vanillin
■ yy. veratraldehyde

The additions read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Pesticide chemical	CAS Reg. No.	Limits
* *	*	* * * *
acetaldehyde ethyl cis-3-hexenyl acetal ...	28069–74–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * *
Acetophenone	98–86–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * *
allyl alpha-ionone	79–78–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * *
Benzaldehyde	100–52–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * *
benzyl alcohol	100–51–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * *
benzyl butyrate	103–37–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * *
benzyl isobutyrate	103–28–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * *
benzyl propionate	122–63–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * *
benzaldehyde, 4-methoxy-	123–11–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * *
benzenemethanol, alpha-methyl-, 1-acetate.	93–92–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * *
benzoic acid, ethyl ester	93–89–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * *
butanoic acid, 3-oxo-, ethyl ester	141–97–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * *
2-buten-1-one, 1-(2,6,6-trimethyl-1,3-cyclohexadien-1-yl)-.	23696–85–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * *
3-buten-2-one, 3-methyl-4-(2,6,6-trimethyl-2-cyclohexen-1-yl)-.	127–51–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * *
Carvacrol	499–75–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * *
cinnamic aldehyde	104–55–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * *
cinnamic alcohol	104–54–1	When ready for use, the end-use concentration is not to exceed 100 ppm.

TABLE 1 TO PARAGRAPH (a)—Continued

Pesticide chemical	CAS Reg. No.	Limits
* *	*	* * * * *
Cuminaldehyde	122–03–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
diethyl malonate	105–53–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
1,1-diethoxy-3,7-dimethylocta-2,6-diene	7492–66–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
dihydro-beta-ionone	17283–81–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
dihydrocarvyl acetate	20777–49–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
ethylene brassylate	105–95–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
ethyl salicylate	118–61–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
glyceryl triacetate	102–76–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
2-hepten-4-one, 5-methyl-	81925–81–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
Hydroxycitronellal	107–75–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
Hydroxycitronellol	107–74–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
4-(p-hydroxyphenyl)-2-butanone	5471–51–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
2-methoxy-4-propylphenol	2785–87–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
methyl benzoate	93–58–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
4′-methylacetophenone	122–00–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
alpha-methylbenzyl alcohol	98–85–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
alpha-methylcinnamaldehyde	101–39–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
methyl cinnamate	103–26–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
methyl salicylate	119–36–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
6-nonenal, (6Z)-	2277–19–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
cis-6-nonen-1-ol	35854–86–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
octanal dimethyl acetal	10022–28–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
phenethyl acetate	103–45–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
phenyl ethyl alcohol	60–12–8	When ready for use, the end-use concentration is not to exceed 100 ppm.

TABLE 1 TO PARAGRAPH (a)—Continued

Pesticide chemical	CAS Reg. No.	Limits
* *	*	* * * * *
phenethyl isobutyrate	103–48–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
phenethyl phenylacetate	102–20–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
phenylacetaldehyde dimethyl acetal	101–48–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
3-phenyl-1-propanol	122–97–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
propanoic acid, 2-methyl-, 4-formyl-2-methoxyphenyl ester.	20665–85–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
triethyl citrate	77–93–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
delta-1-(2,6,6-trimethyl-3-cyclohexen-1-yl)-2-buten-1-one.	57378–68–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
Thiogeraniol	39067–80–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
thymol (8CA)	89–83–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
Vanillin	121–33–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
veratraldehyde	120–14–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *

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BILLING CODE 6560–50–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Part 51–4

RIN 3037–AA16

Prohibition on the Payment of Subminimum Wages Under 14(c) Certificates as a Qualification for Participation as a Nonprofit Agency Under the Javits Wagner O'Day Act

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Final rule.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled, operating as the U.S. AbilityOne Commission (''Commission''), is publishing a final rule implementing a new requirement that a nonprofit agency (NPA) seeking both initial and continuing qualification under the Javits Wagner O'Day Act (JWOD Act) to participate in the AbilityOne Program must certify that it will not use certificates authorized under section 14(c) of the Fair Labor Standards Act of 1938 (''14(c) certificates'') to pay employees on its AbilityOne contracts. Pursuant to the rule, individuals with significant disabilities and those who are blind employed by participating NPAs, and working on AbilityOne contracts, will earn at least the Federal minimum wage, the applicable local or state minimum wage if higher than the Federal minimum wage, or the applicable prevailing wage for contracts subject to the McNamara-O'Hara Service Contract Act, whichever is highest.

DATES: This final rule is effective October 19, 2022.

FOR FURTHER INFORMATION CONTACT: Shelly Hammond, Director of Contracting and Policy, by telephone (571) 457–9468 or by email at *shammond@abiltyone.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. The JWOD Act and Implementing Regulations

The JWOD Act leverages the purchasing power of the Federal Government to create employment opportunities through the AbilityOne Program for individuals who are blind or have significant disabilities. The Program is administered by the 15-member, presidentially appointed Commission that, as an independent Federal agency, maintains a Procurement List of products and services that Federal agencies must purchase from participating NPAs who employ individuals who are blind or have significant disabilities. *See* 41 U.S.C. 8503 and 8504. Central nonprofit agencies (CNAs) are responsible for distributing orders to Commission-approved NPAs to provide products and services to Federal agencies. *See* CFR 51–2.4(a)(3) & 51–3.4. NPAs must meet initial qualification requirements and maintain those qualifications throughout their participation in the

AbilityOne Program. *See* 41 CFR 51–4.2 and 51–4.3.

The Commission has five roles stated in the JWOD Act. First, the Commission decides on the addition or removal of products and services on the Procurement List. *See* 41 U.S.C 8503(a). Second, the Commission sets the fair market price that the Federal Government will pay for the products or services. *See* 41 U.S.C. 8503(b). Third, the Commission designates nonprofit agencies to be the CNAs, who are responsible for ''facilitating the distribution of orders'' for products or services among participating NPAs. *See* 41 U.S.C. 8503(c). Fourth, the Commission promulgates regulations ''on other matters as necessary'' to carry out the JWOD Act. *See* 41 U.S.C. 8503(d)(1). Fifth, the Commission engages in a ''continuing study and evaluation of its activities'' to ensure effective administration of the JWOD Act. *See* 41 U.S.C. 8503(e).

To date, pursuant to the JWOD Act, the Commission has designated National Industries for the Blind (NIB) and SourceAmerica as the CNAs responsible for distributing orders to participating NPAs. *See* 41 CFR 51–1.3 (definition of CNA); *see also* 41 CFR 51–3.2 (describing duties of a CNA). The CNAs provide information as needed by the Commission and otherwise assist the Commission in implementing the Commission's regulations. NPAs associated with NIB primarily employ blind and visually impaired individuals; NPAs associated with SourceAmerica primarily employ individuals with significant disabilities, including intellectual and developmental disabilities (IDD). As of April 2022, NIB represented 58 NPAs participating in the AbilityOne Program, and SourceAmerica represented 391 NPAs.

In making its determination on whether to add a product or service to the Procurement List, the Commission assesses four suitability criteria. *See* 41 CFR 51–2.4. First, the Commission considers whether there is the potential for the NPA to employ enough individuals who are blind or have significant disabilities as needed to carry out the contract. Second, the Commission determines that the NPA meets all the qualification requirements set forth in 41 CFR part 51–4. Third, the Commission assesses the capability of the NPA to provide the product or service, including the required labor operations, Government quality standards, and delivery schedules. Finally, if there is a current contractor providing the product or service the Commission determines the level of impact on that contractor.

B. Notice of Proposed Rulemaking

On October 12, 2021, the Commission issued a notice of proposed rulemaking (NPRM) in the **Federal Register**. The proposed rule required an NPA seeking initial qualification for the Program to provide certification that it would not pay subminimum or sub-prevailing wages (where applicable) by using wage certificates authorized under section 14(c) of the Fair Labor Standards Act of 1938 (FLSA) to employees on any new contract or subcontract awarded under the Program, or any renewal or extension of such contract. *See* 29 U.S.C. 214(c). The NPRM required the same certification on an annual basis for NPAs to maintain their qualification under the Program.

The NPRM invited comments through November 12, 2021. *See* 86 FR 56679 (Oct. 12, 2021). After requests, the Commission extended the comment period through December 12, 2021. *See* 86 FR 62768 (Nov. 12, 2021). The NPRM requested comments and supporting data on several specific questions. The Commission asked whether the rule should apply to new contracts, extensions and renewals of existing contracts once they expire, and the exercise of contract options. The Commission asked how much time, if any, would be necessary for NPAs to come into compliance with the rule. Finally, the Commission asked what impact, if any, the rule would have on the receipt by AbilityOne employees of Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) and attendant Government benefits such as Medicare and Medicaid.

The Commission received 183 total comments to the NPRM. Of this total, nearly 60 comments were from disability rights and advocacy organizations, seven comments were from the two CNAs (SourceAmerica and NIB) and five NPAs; more than 100 comments were from private individuals (commenters who did not assert or self-identify organizational membership); one comment was from a labor organization, one from a Fortune 500 company, and one from a Member of Congress.

The Commission carefully considered and analyzed each comment but did not address technical and other minor changes requested by commenters.

C. Changes From the Proposed Rule

The final rule applies the certification requirement to the exercise of options on existing contracts, as well as to new contracts and extensions and renewals of contracts. The final rule is effective 90 days after publication in the **Federal Register**. However, an NPA may apply for an extension for up to 12-months in order to come into compliance if it can provide evidence for why it cannot make the wage adjustments by the effective date (due to budgetary limitations, because doing so will necessarily harm employees, or for other good cause) and if it provides a corrective action plan describing the steps it intends to take to achieve compliance within the approved extension period.

II. Analysis of Comments and Changes

A. Utility of the Rule

1. Comments

Of the 183 comments received, the overwhelming majority of both individual and organizational commenters supported the utility and appropriateness of the rule. Numerous organizational commenters supported the rule as a means of ensuring access to economic independence and self-sufficiency for individuals with disabilities. Individuals with disabilities similarly claimed their right to earn equal wages for equal work and to be able to afford life's necessities, including housing. Several commenters noted that evolutions in disability rights law, modernizations and advancements in the business marketplace and available community supports rendered section 14(c) certificates no longer necessary or acceptable.

Only five commenters opposed the rule in its entirety. These commenters predicted that increasing wages for individuals with disabilities would result in the loss of government assistance and attendant benefits, resulting in significant adverse impacts on individuals with disabilities. One NPA stated that the impact on employees with disabilities would be devastating, especially for those working on product contracts. Two commenters stated that the justification for 14(c) certificates remained as valid now as it had been in 1938, given the inability of some individuals with disabilities to work as productively as individuals without disabilities doing the same job.

2. Discussion

Ending the payment of subminimum or sub-prevailing wages in the AbilityOne Program is designed to help break cycles of poverty and dependence and assist in moving individuals with disabilities to careers of meaningful employment, increased economic independence, greater dignity, enhanced self-worth, self-determination,

and self-sufficiency. Ending wage disparities between employees based solely on disability places the economic power of individuals with disabilities on par with their work colleagues who do not have disabilities and paying the same wage to individuals with disabilities and those without conveys a message of equality and a commitment to inclusion.

Changes in societal expectations of people with disabilities, together with the availability of reasonable accommodations and employment supports, have significantly changed the employment landscape for individuals with disabilities. The assumptions that existed in 1938 regarding the inability of individuals with disabilities to work as productively as individuals without disabilities doing the same job are not supported by existing data.

As discussed in greater detail below, there are Federal and state programs that can mitigate the adverse effects that increased wages may have on an employee's receipt of government benefits. Moreover, the Commission believes that any possible adverse effects in this area are outweighed by the benefits of the rule.

3. Change

The Commission has made no change to this section of the rule.

B. Scope of the Rule's Application: New Contracts, Renewals, Extensions and Options

1. Comments

The Commission requested comment on whether the rule should apply to new contracts, extensions, and renewals of contracts and/or the exercise of options on contracts. Twenty-two commenters, primarily from disability advocacy organizations and NPAs, supported application of the rule to new contracts, extensions and renewals of contracts, and the exercise of options. These commenters noted that AbilityOne Program contracts tend to be long term contracts with a base year and an additional four to nine option years. If option years were not included, an NPA could avoid applying the proposed rule for an additional five to ten years after the effective date. Additionally, some commenters stated that since more states are prohibiting the payment of 14(c) wages by requiring adherence to state minimum wage laws, there was no reason to delay application until a contract was ready for renewal or extension. A major corporation and two large AbilityOne NPAs commented that ending section 14(c) wages should apply universally, including options, and a labor union commented that not including options would introduce new inequities in the Program given the likelihood that contracts contain multiple option years.

The two CNAs did not directly comment on the rule's application to new contracts, extensions, or options, but both CNAs supported the rule. However, SourceAmerica noted that ''it is critical that the final regulatory change include language that clarifies that at the time when a contract is up for renewal, the NPA will need to certify that they will not pay subminimum wages for that specific contract.'' This final rule does, in fact, clarify that NPAs must certify it will not use a 14(c) certificate after the effective date on any AbilityOne existing contract at the point of renewing a contract renewal, executing an extension, or exercising an option.

Once again, five commenters opposed the rule, but, of those, two commenters stated that, if implemented, the rule should only apply to either new contracts or contract renewals, and the remainder did not address the issue.

2. Discussion

The purpose of the rule is to ensure that individuals with disabilities are paid equally for the work they perform as are individuals without disabilities performing the same or similar work. Applying the rule to extensions and renewals of contracts, as well as to options, avoids a piecemeal application of the rule. Given the variety and timing of contracts currently being performed, and their respective expiration or renewal dates, there is a possibility NPAs with more than one contract could potentially pay the Federal or higher state minimum wage, or prevailing wage, on new contracts, but a lower wage on existing contracts that were renewed or extended. Differences in contract timing could improperly incentivize NPAs to selectively assign employees to those AbilityOne contracts that are not yet subject to the rule.[1] In addition, by including contract options, the Commission is more closely aligned with the Department of Labor (DOL) rule, implementing Executive Order 14026.[2] That rule generally requires Federal contractors to pay employees workers performing on or in connection with covered Federal contracts at least the Executive order minimum wage (currently $15.00 per hour); that rule applies to new contracts entered into on or after January 30, 2022, and also covers existing contracts that are renewed or extended (pursuant to an exercised option or otherwise) on or after January 30, 2022, on Federal contracts, including options. The DOL rule generally covers employees working on AbilityOne service contracts.

3. Change

The Commission has retained application of the rule to new contracts and to extensions and renewals. The Commission has changed the rule to apply its requirement to the exercise of options on contracts.

C. Effective Date of the Rule

1. Comments

The proposed rule did not include an effective date. The Commission requested comment on how much time, if any, would be necessary for NPAs to comply with the new wage requirement.

One commenter stated that the rule should be effective immediately, another stated the rule should be effective 90 days following publication, and two commenters felt the rule should be effective six months following publication. Two NPAs with experience eliminating the use of section 14(c) certificates noted that a two- or three-year phase in period might be appropriate.

The primary reason provided for immediate coverage, as well as for short implementation time periods, was that NPAs had been given sufficient notice and lead time on eliminating the use of subminimum wages under section 14(c) certificates, in light of a statement made by the Commission in 2019 that NPAs should not be using 14(c) certificates on AbilityOne contracts. These commenters stated that the transition process away from subminimum wages should therefore be well underway at all NPAs.

A coalition of more than 100 national disability organizations recommended the Commission adopt the timeline recommendation set forth in the report issued by the National Council on Disability (NCD) in 2012. In that report, NCD recommended that individuals with disabilities in a certificate setting for ten years or less be transitioned within two years, those in the setting from ten to 20 years be transitioned in four years, and those in a certificate setting longer than 20 years be transitioned within six years.[3] The

[1] This rule does not preclude an NPA from transferring employees to its non AbilityOne contracts and using 14(c) certificates to pay those employees. We address that issue below.

[2] *See* 86 FR 67126 (Nov. 24, 2021).

[3] *https://ncd.gov/publications/2012/August232012/recommendations* (last viewed June 2022).

recommendations of the NCD report applied to the elimination of all 14(c) certificates. The commenters did not specifically explain why the same timeline should apply to the smaller number of affected individuals in the AbilityOne Program.

One commenter observed that NPAs employing individuals with disabilities are as different as their respective employees. This commenter suggested an individualized approach, recommending that the Commission establish different timelines based on factors such as an NPA's size, number and types of contracts and number of employees, geography and access to transportation, and an NPA's ability to recruit new employees.

Twenty commenters, including many organizational commenters, recommended a one-year implementation period, others recommended a two-year implementation period, and nearly ten commenters recommended a two to three-year implementation period, with a possible one-time extension. The rationale for implementation periods of one to three years was that NPAs would need significant time to adapt to the new wage requirement, including restructuring contracts and budgets. The rationale also included a need for NPAs to acquire or add services such as benefits counseling for their employees to ensure that any adverse impact on receipt of benefits by their employees would be mitigated.

2. Discussion

In 2019, the Commission sent a letter to SourceAmerica stating that the use of 14(c) certificates on AbilityOne contracts was inappropriate and that the time had come to pay all AbilityOne employees the Federal minimum wage or the state minimum wage if higher. The Commission charged SourceAmerica with developing a strategic plan for assisting affiliated NPAs with transitioning from the use of 14(c) certificates. The letter stated as its goal that all AbilityOne NPAs would be paying the Federal minimum wage or the state minimum wage if higher within three years (February 2022) and the prevailing wage within six years (February 2025).[4]

In response to the Commission's letter, SourceAmerica initiated a ''14(c) Transition Program.'' The program provided interested NPAs with financial and technical assistance in eliminating their use of 14(c) certificates. Since October 2019, SourceAmerica has provided consultation services to 86 NPAs, enrolled 35 NPAs in at least one program support, and awarded NPAs more than $600,000 in transition support grants.[5]

According to SourceAmerica, the program has been quite successful. The number of employees paid under 14(c) certificates by its affiliated NPAs has declined from 9,654 employees in mid-2018 to 2,900 employees as of the first quarter of fiscal year (FY) 2022. Of this number, 1,750 employees were working on services contracts subject to Executive Order 14026, which took effect in January 2022. Employees working on such contracts are required to be paid at least the Executive order minimum wage of (currently $15.00 per hour,), but under a section 14(c) certificate can be paid less than the prevailing wage. Data self-reported to SourceAmerica by associated NPAs shows approximately 770 employees being paid at least the Federal minimum wage but less than the prevailing wage.

The remaining approximately 1,200 employees work primarily on product contracts and are clustered within approximately 24 NPAs. Data collected by the Commission indicates that the average wage paid such employees is $5.11 per hour.

As noted above, SourceAmerica has invested significant resources toward transitioning its associated NPAs from using 14(c) certificates since 2019, and it has pledged to continue to do so after this rule has been formally implemented. Given the fact that NPAs have been on notice since 2019 of the Commission's position on phasing out use of 14(c) certificates, and the availability of CNA support to do so, the Commission believes that a 90-day implementation period is sufficient time to allow the remaining NPAs to effectuate the necessary change. For this reason, the Commission also does not adopt the lengthy implementation dates set force in the NCD report that applies to use of 14(c) certificates nationwide.

The Commission recognizes that some NPAs have not taken advantage of SourceAmerica's transition program or are still in the process of transitioning from use of 14(c) certificates. For that reason, the Commission will accept applications from NPAs for an extension of up to 12 additional months to come into compliance with the rule. The Commission will use its existing authority under 41 CFR 51–4.5 to grant such extensions. The NPA must provide evidence for why it cannot make the wage adjustments by the effective date (due to budgetary limitations, because doing so will necessarily harm employees, or for other good cause) and must have a corrective action plan in place that the NPA will follow to come into compliance with the rule. Requests for an extension must be submitted no later than 30 days prior to the effective date of the rule. If an extension is granted, the Commission will not award any new Procurement List additions to that NPA during the extension period, absent exigent circumstances, and a written request from the Federal customer.

3. Change

The Commission includes an effective date of 90 days after the publication date of the final rule, with the possibility of a one-time extension of up to 12 months.

D. Impact on Receipt of Government Benefits

1. Comments

The Commission sought comment on what impact, if any, the proposed rule would have on the receipt of social security benefits, such as Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) and attendant government health insurance, such as Medicare and Medicaid, by employees with disabilities, and requested recommendations on how to address any adverse impacts that were identified.

Several commenters, including a Member of Congress, stated that increased wages for individuals with disabilities could adversely impact the receipt of government income and health care by individuals with disabilities. However, the comments did not discuss Federal or state programs employees could utilize to mitigate a reduction or loss of benefits due to increased earnings. The commenters also did not describe any efforts to ensure their employees had access to benefits counseling or training to raise awareness about their eligibility for additional or alternative benefits. Finally, the commenters did not include data substantiating the adverse impact they predicted.

Many organizational commenters acknowledged the reduction or loss of government benefits was a concern for some employees once their wages

[4] Letter from Mr. Thomas Robertson, Chair of the AbilityOne Commission to Mr. Norman Lentz, Chair of the Board of SourceAmerica (February 19, 2019). *https://www.abilityone.gov/media_room/documents/Commission%20Ltr%20to%20SourceAmerica%20-%20Subminimum%20Wage%20-%2020190219.pdf.*

[5] SourceAmerica, 14(c) Transition Program Update, AbilityOne Public Meeting, October 7, 2021, Slides 15–17. *https://www.abilityone.gov/commission/documents/US%20AbilityOne%20Commission%20Public%20Meeting%207Oct2021%20Advance%20Slides%20Post.pdf.*

increased. However, these organizations, as well as NPAs that successfully transitioned their employees from 14(c) certificates, highlighted the various government programs designed to assist employees with disabilities who are concerned that increased wages may adversely impact their benefits. These include assistance through a Medicaid Buy-In option in many states, the Ticket to Work program under the Social Security Act, and establishment of Achieving a Better Life Experience Act (ABLE) accounts (which are tax-favored accounts enabling individuals with disabilities to save money for disability-related expenses including education, housing, transportation, employment training and support, assistive technology and personal support services, health care prevention and wellness services, and financial management). A number of commenters also stated there was evidence that NPAs could pay above the minimum wage, and also provide healthcare and other important benefits for their employees, so that employees would not need to rely on government health care.

Several commenters stated that an essential component of mitigating any adverse impact on continued receipt of government benefits was for employees to have access to professional benefits counseling. Some commenters recommended that the Commission require NPAs to offer such services as a qualification for participation in the Program; other commenters recommended that the CNAs be required to provide such services to the NPAs; and some commenters called for NPAs to educate their employees that a benefits reduction was not an inevitable outcome of a wage increase.

Ultimately, these commenters stated that any potential loss of benefits was not a legitimate reason to scale back or not implement the proposed rule. They argued that the overall benefit the proposed rule would provide for AbilityOne NPA employees with disabilities on AbilityOne contracts outweighed the benefit reduction risk that some employees might face. These commenters also observed that reductions or loss of benefits was not a problem specific to the AbilityOne Program, but rather a broader issue about how the nation's system to assist individuals with disabilities can limit full employment. One NPA that noted this point stated that the focus should be on advocating for legislative efforts aimed at benefits reform.

2. Discussion

The Commission has been concerned from the outset that the elimination of subminimum and sub-prevailing wages could harm individuals with disabilities who rely on government income and health benefits. As the comments indicate, however, there is a wide range of Federal and state government programs designed to mitigate the impact and fear of benefits reduction. The Commission has also determined that the potential loss of government benefits for some employees is not a sufficient basis to abandon a rule that will provide significant financial benefits to a large number of individuals.

It is beyond the scope of this rule for the Commission to mandate that all NPAs have professional benefits counselors on staff or for the CNAs to provide such resources. However, SourceAmerica's ''14(c) Transition Program'' has already provided such resources to participating NPAs and can continue to do so for additional NPAs. The AbilityOne Commission will also develop a list of resources that NPAs can access and will make that list available on its website. Finally, the Commission observes that concerns regarding benefit reductions because of increased wages is a larger issue that requires engagement beyond the AbilityOne Program. The Commission will share the relevant comments with the Department of Health and Human Services, the Social Security Administration, and other agencies with cognizance over these topics.

3. Change

The Commission has made no change to this section of the rule.

E. Concerns Regarding Reduced Working Hours and Job Losses

1. Comments

One NPA stated that its budget could not absorb the increased salary expenses that the rule would require. This commenter stated they would need to reduce working hours for their employees with disabilities or, in some cases, terminate their employment. The commenter did not provide specific data to substantiate the anticipated adverse impact on employment or hours worked by employees with disabilities.

Two NPAs shared their success in transitioning away from section 14(c) certificates without dramatic adverse impacts on their employees in terms of working hours or jobs. Each of these NPAs described how they were able to pay their workers fair wages and benefits within their existing contracts.

2. Discussion

The Commission recognizes that NPAs vary in size and budget and will thus experience different budget constraints in increasing wages. The allowance of a request for an extension of up to 12 months is designed to provide NPAs a more individualized approach to plan for change in a way that benefits its workforce without causing an adverse impact on the delivery of products and services to Federal customers.

3. Change

The Commission has made no change to this section of the rule.

F. Expansion of the Current Rule

1. Comments

Several commenters asked the Commission to expand the rule and prohibit NPAs, as a matter of Program qualification, from using 14(c) certificates at all, whether their employees were working on an AbilityOne contract or not. The commenters observed that since the 75 percent direct labor hour ratio requirement extended to the entire NPA, and not simply to its AbilityOne contracts, the prohibition on use of section 14(c) certificates should similarly apply to the entire NPA.

Several commenters applauded the rule as significant progress in advancing the rights of individuals with disabilities. However, they noted that more needed to be done to achieve competitive, integrated employment for people who are blind or have significant disabilities. Commenters offered a range of ideas for how the Commission could achieve such changes in the Program, including requirements for NPAs to help their employees move to employment outside of AbilityOne jobs.

2. Discussion

The Commission appreciates the argument that to be qualified to participate in the AbilityOne program, NPAs should be precluded from using 14(c) certificates anywhere in their workforce. However, such a requirement would be a significant change from the proposed rule and the Commission believes it should provide an opportunity for separate notice and comment if it decides such a requirement is appropriate.

This rule is a foundational step for ensuring that all AbilityOne NPA employees with disabilities on AbilityOne contracts receive competitive wages for the work they perform. The Commission also agrees that additional steps must be taken to

modernize the AbilityOne Program, but those changes are beyond the scope of this rule.

3. Change

The Commission has made no change to this section of the rule.

Regulatory Procedures

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

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives. E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and promoting flexibility. E.O. 13563 further recognizes that some benefits are difficult to quantify and provided that, where appropriate and permitted by law, agencies may consider and discuss qualitative values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

A. Costs of Prohibiting the Use of Section 14(c) Certificates as a Qualification for Participation in the AbilityOne Program

The Commission believes the costs of requiring all new NPAs seeking initial qualification to participate in the Program, and participating NPAs wishing to maintain Program qualification, to certify they will not pay subminimum or sub-prevailing wages under a 14(c) certificate on AbilityOne contracts are not substantial and are outweighed by the benefits of the rule.

No NIB-associated NPA uses 14(c) certificates to pay its employees on AbilityOne contracts. Those NPAs will not be affected by this rule.

SourceAmerica-associated NPAs performing services contracts are generally subject to Executive Order 14026 and its implementing DOL regulation. Under that regulation, the covered NPAs must pay at least the Executive order minimum wage (currently $15.00 per hour and will be subject to inflationary increases in future years) for work on or in connection with covered Federal contracts. This rule will therefore not have an impact on those NPAs covered by Executive Order 14026 and DOL's implementing rule, except where the prevailing wage is higher than the Executive order minimum wage (currently $15.00 per hour).

The NPAs who will be affected by this rule are those who hold product contracts with the Federal Government and use 14(c) certificates to pay their employees below the federal or state minimum wage. Given the concerted efforts by NPAs, supported by SourceAmerica, to reduce their use of 14(c) certificates, 120 of the 449 participating NPAs still use such certificates on some AbilityOne contracts. Those workers are clustered within 24 of the 120 NPAs. In terms of absolute numbers, this translates into approximately 1,200 employees, or approximately 3% of the AbilityOne workforce.

Based on first quarter (Q1) FY 2022 data collected by AbilityOne, there are also approximately 550–750 employees working on services contracts who earn at least the Federal minimum wage but less than the prevailing wage. To the extent that the prevailing wage is higher than the Executive order minimum wage (currently $15.00 per hour), this rule will result in increased wages for those employees. Those commenters who stated they could not absorb the increased costs did not provide the Commission with any specific budget numbers for such increases or details on why they could not manage those costs.

The Commission recognizes that increased wages may trigger benefit reductions for some individuals with disabilities depending on their individual circumstances. However, as described in this **SUPPLEMENTARY INFORMATION**, there are various Federal and state programs designed to mitigate this risk.

With regard to benefits of the rule, paying individuals with disabilities the same hourly wage as individuals without disabilities performing same or similar work provides both tangible and intangible benefits. Individuals with disabilities earning subminimum or sub-prevailing wages will now earn the Federal minimum wage, state minimum wage or prevailing wage. The tangible benefits to these individuals are identical to any worker experiencing a wage increase, including increased personal wealth and economic independence, and an increased ability to improve aspects of daily life requiring a higher level of financial resources.

The intangible benefits are harder to quantify, but these benefits accrue to individuals with disabilities as well as our larger society. Paying individuals with disabilities wages equal to the legal wage requirements for individuals without disabilities performing same or similar work sends a clear message of equity and fairness that work should be valued equally. Removing subminimum or sub-prevailing wages helps further a culture of inclusion and enhances the dignity and life experiences of individuals with disabilities. Opportunities to earn higher wages leads to increased levels of self-sufficiency and less dependence on services or government assistance.

Final Regulatory Flexibility Analysis

This final rule was reviewed under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* which requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and is likely to have a significant economic impact on a substantial number of small entities. The RFA also requires preparation of a final regulatory flexibility analysis, or a certification by the head of the agency that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities and a factual statement supporting the certification.

The rule only imposes a burden on NPAs still paying subminimum or sub-prevailing wages under section 14(c) certificates. When the NPRM was published, the Commission stated that SourceAmerica's available data revealed 142 associated NPAs were utilizing section 14(c) certificates. Following publication, SourceAmerica provided updated data from first quarter FY 2022 showing 120 NPAs still paying either subminimum or sub-prevailing wages to just over 2,900 individuals with disabilities, which is slightly higher than ten percent of the total SourceAmerica AbilityOne work force of approximately 28,000 employees.

Of this number, 1,750 employees were working on services contracts that would be governed by the provisions of the DOL rule implementing E.O. 14026, which took effect January 2022. Employees working on or in connection with such contracts would therefore be paid at least the new Executive order minimum wage (currently $15.00 per hour) for work on or in connection with

covered contracts as required by the rule. However, if such employees are being paid pursuant to a section 14(c) certificate, they can still be paid less than the prevailing wage. Data self-reported to SourceAmerica by associated NPAs shows approximately 550–750 employees being paid at least the Executive order minimum wage but less than the prevailing wage. After the effective date of this rule, those employees will be required to be paid the prevailing wage.

The remaining approximately 1,200 employees work primarily on product contracts and are clustered within a handful of NPAs (approximately 24) relative to the overall number of just under 450 participating NPAs. After the effective date of this rule, these employees will be paid at least the Federal minimum wage or the higher state minimum wage.

Accordingly, the Commission certifies this rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no final regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

The final rule requires the Commission to collect information within its Annual Representations and Certifications regarding the certification not to pay subminimum wages under 14(c) certificates to employees. The Commission collects similar information (overall wages) but does not currently or specifically collect a certification not to pay subminimum or sub-prevailing wages under section 14(c) certificates to employees.

A more complete discussion of the need for this final rule is located throughout the Supplementary Information. In summary, the Commission has determined that payment of subminimum or sub-prevailing wages under 14(c) certificates to individuals with disabilities working in the AbilityOne Program is not consistent with modern disability policy. Paying individuals with disabilities less than individuals without disabilities performing same or similar work continues wage disparity in the Program.

For the reasons set forth above, the Commission is adding a new requirement for NPAs to initially qualify and maintain qualification in the Program. Pursuant to this rule, NPAs must certify that after the effective date, on all new AbilityOne contracts awarded, after the effective date, on options exercised on existing contracts, and on contract extensions or renewals, the NPA will not pay individuals with disabilities subminimum or sub-prevailing wages under a 14(c) certificate. The Commission will collect information regarding compliance with this new requirement through documentation submitted for initial qualification, and on the Annual Representations and Certifications form.

Unfunded Mandates Reform Act of 1995

The final rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, taken together, of $100 million or more, or in increased expenditures by the private sector of $100 million or more.

Authority: 41 U.S.C. 8503(d).

List of Subjects in 41 CFR Part 51–4

Government procurement, Individuals with disabilities, Reporting and recordkeeping requirements.

For the reasons set forth in the **SUPPLEMENTARY INFORMATION**, the Commission amends 41 CFR part 51–4 as follows:

PART 51–4–NONPROFIT AGENCIES

■ 1. The authority citation for part 51–4 continues to read as follows:

Authority: 41 U.S.C. 46–48c.

■ 2. Amend § 51–4.2 by adding paragraph (a)(1)(iv) and revising paragraph (b) to read as follows:

§ 51–4.2 Initial qualification.

(a) * * *

(1) * * *

(iv) A certification that the nonprofit agency will not use wage certificates authorized under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)) to employees on any contract or subcontract awarded under the AbilityOne Program.

* * * * *

(b) The Committee shall review the documents submitted and, if they are acceptable, notify the nonprofit agency by letter, with a copy to its central nonprofit agency, that the Committee has verified its nonprofit status and certification under paragraph (a)(1)(iv) of this section under the under the Javits-Wagner-O'Day Act.

* * * * *

■ 3. Amend § 51–4.3 by adding paragraph (b)(10) to read as follows:

§ 51–4.3 Maintaining qualification.

* * * * *

(b) * * *

(10) Certify the nonprofit agency will not use wage certificates authorized under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)) to employees on any contract or subcontract under the AbilityOne Program.

* * * * *

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–15561 Filed 7–20–22; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2019–0115; FF09E23000 FXES1111090FEDR 223]

RIN 1018–BD84

Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (''the Service'') is rescinding the rule titled ''Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat'' that published on December 18, 2020, and became effective January 19, 2021. The rule set forth new regulations addressing how we exclude areas of critical habitat under section 4(b)(2) of the Endangered Species Act of 1973, as amended, outlining when and how the Service will undertake an exclusion analysis. This action removes the regulations established by that rule.

DATES: This final rule is effective August 22, 2022.

ADDRESSES: Public comments and materials received, as well as supporting documentation used in the preparation of this final regulation, are available on the internet at *https://www.regulations.gov* in Docket No. FWS–HQ–ES–2019–0115.

FOR FURTHER INFORMATION CONTACT: Bridget Fahey, U.S. Fish and Wildlife Service, Division of Conservation and Classification, 5275 Leesburg Pike, Falls Church, VA 22041–3803, telephone 703/358–2171. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 2021, the President issued Executive Order (E.O.) 13990, which, in section 2, required all executive departments and agencies to review, and to consider revising or rescinding rules inconsistent with the policy set forth therein, Federal regulations and actions taken between January 20, 2017, and January 20, 2021. In support of E.O. 13990, a ''Fact Sheet'' was issued that set forth a non-exhaustive list of specific agency actions that agencies are required to review to determine consistency with the policy considerations articulated in section 1 of the E.O. (See *www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/*). Among the agency actions listed on the Fact Sheet was our December 18, 2020, final rule (85 FR 82376; hereafter referred to as ''the Final Rule'') that established new regulations addressing how we implement section 4(b)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* hereafter, ''the Act''). On January 14, 2021 (5 days before the Final Rule took effect), seven environmental groups challenged it, filing suit against the Service in Federal district court in Hawaii. Shortly thereafter on January 19, 2021, 19 States similarly filed suit challenging the Final Rule in the Northern District of California. Parties in both cases have agreed to long-term stipulated stays in the litigation as this rulemaking proceeds.

In our review of the Final Rule pursuant to E.O. 13990, we evaluated the benefits and drawbacks of the Final Rule, the necessity of the rule, its consistency with applicable case law, and other factors. Following our review, we determined that the Final Rule is problematic because it unduly constrains the Service's discretion in administering the Act, potentially limiting or undermining the Service's role as the expert agency and its ability to further the conservation of endangered and threatened species through designation of their critical habitats. Therefore, on October 27, 2021, we proposed to rescind the Final Rule (86 FR 59346). We solicited public comments on the proposed rule through November 26, 2021. In response to several requests, we extended the deadline for submission of public comments to December 13, 2021 (86 FR 67012, November 24, 2021).

In this final rule, we focus our discussion on the comments we received during the comment period and our consideration of the issues raised. For background on the statutory and legislative history and case law relevant to the Final Rule, we refer the reader to the proposed rule to the Final Rule (85 FR 55398, September 8, 2020). For our detailed rationale for proposing to rescind the Final Rule, we refer the reader to the proposed rule to this final rule (86 FR 59346, October 27, 2021).

After consideration of the information provided through the public comment process and for reasons outlined in the proposed rule and this document, we are finalizing the proposal to rescind the December 18, 2020, Final Rule. After the effective date of this rule, the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (16 U.S.C. 1533(b)(2)), which we published jointly with the National Marine Fisheries Service (NMFS; collectively the Services) on February 11, 2016 (81 FR 7226) (hereafter ''the Policy''), and the joint regulations at 50 CFR 424.19, which were set forth by a final rule that published August 28, 2013 (78 FR 53058) (in this document we refer to these regulations either as 50 CFR 424.19 or as the ''2013 Rule''), will revert to being the governing rules and standards for any critical habitat rulemakings that the Service publishes. We note, however, as discussed below, that one aspect of the rulemakings for the Policy and the 2013 Rule—the language in the preambles indicating that decisions not to exclude areas under section 4(b)(2) are committed to agency discretion and are judicially unreviewable—will no longer be applicable. We have provided clarification to questions and concerns below in the responses to public comments.

Rationale for Rescission

In the preamble to the Final Rule, we explained that, in light of the Supreme Court's decision in *Weyerhaeuser Co.* v. *U.S. FWS,* 139 S. Ct. 361 (2018) (*Weyerhaeuser*), we needed to revisit certain language in the preambles for the 2013 Rule and the Policy that asserted that exclusion decisions are committed to agency discretion and are therefore judicially unreviewable. For example, in the preamble to the 2013 Rule, the Services had cited case law that supported their conclusion that exclusions are wholly discretionary and that the discretion not to exclude an area is judicially unreviewable (78 FR 53072, August 28, 2013). The Services also stated in the preamble to the Policy that then-recent court decisions resoundingly upheld the discretionary nature of the Secretaries' consideration of whether to exclude areas from critical habitat (81 FR 7226, p. 7233; February 11, 2016), and that, although the Services will explain their rationale for not excluding a particular area, that decision is judicially unreviewable because it is committed to agency discretion (*id.* at 7234).

We explained in the Final Rule that the Supreme Court's opinion in *Weyerhaeuser* had rendered inaccurate those prior assertions that decisions not to exclude areas from critical habitat designations are not judicially reviewable. Although the word ''may'' in the second sentence of section 4(b)(2) of the Act indicates discretionary authority and thus the Secretary is not required to exclude areas in any particular circumstances (16 U.S.C. 1533(b)(2)), it was clear from the Court's decision in *Weyerhaeuser* that courts may review decisions not to exclude for abuse of discretion under section 706(2) of the Administrative Procedure Act (APA, 5 U.S.C. 706(2)). 139 S. Ct. at 371. The Final Rule summarized the effect of the Court's opinion in *Weyerhaeuser* as having underscored how important it is for the Service to be deliberate and transparent about how we go about making exclusion decisions. The Final Rule further explained that the Service's objective in promulgating the rule was to provide that ''transparency, clarity, and certainty to the public and other stakeholders'' (85 FR 82376, p. 82385; December 18, 2020).

During the comment period for the 2020 proposed rule, we received numerous public comments that provided both support and opposition for many of the provisions included in that proposed rule (85 FR 55398, September 8, 2020). At that time, we considered all of the comments and decided that finalization of the Final Rule was a permissible policy decision. In issuing the Final Rule, we concluded that the criticisms brought forth by commenters were not sufficient to change our approach in that rulemaking.

We acknowledge that we are now persuaded that many of the commenters' criticisms regarding the Final Rule are valid, and we are including some of those same criticisms as part of our support for rescinding the Final Rule. We have reconsidered the Final Rule and considered public comments and we have now changed our policy view of the best way to strike the appropriate balance between transparency and predictability on the one hand, and flexibility and discretion on the other. We now find that the Final Rule is problematic for three overarching reasons: it limits or undermines the Service's role as the expert agency; it constrains the Service's discretion, thus decreasing the agency's

ability to further the conservation of endangered and threatened species through designation of their critical habitats; and it does not further the goal of providing clarity and transparency and instead creates confusion. We provide further explanation below as to why we have concluded that implementation of the Policy and the regulations at 50 CFR part 424.19 is preferable to the Final Rule.

In the proposed rule we provided rationale for rescinding each of the following provisions of the Final Rule: the statement that we will always undertake a discretionary exclusion analysis whenever a proponent of an exclusion provides credible information supporting the exclusion; the generic prescription for weighing impacts; the statement that we will always exclude areas from a critical habitat designation whenever the benefits of exclusion outweigh the benefits of inclusion; the treatment of Federal lands; and the enumeration of factors to consider under section 4(b)(2) of the Act. Having reconsidered our reasoning for rescinding each of these provisions in light of the public comments we received on the proposed rule (86 FR 59346, October 27, 2021), we reaffirm our conclusions with respect to each of these provisions. For the specific reasons set forth below and our detailed rationale in our proposed rule, the Service now concludes that rescinding the Final Rule and resuming implementation of 50 CFR 424.19 and the Policy will better enable the Service to ensure conservation of endangered and threatened species and the ecosystems on which they depend, as mandated by the Act.

First, the Final Rule potentially limits or undermines the Service's role as the expert agency responsible for administering the Act because it potentially gives undue weight to outside parties in guiding the Secretary's statutory authority to exclude areas from critical habitat designations. Through the Secretary, Congress delegated the authority to designate critical habitat for listed species to the Service. Section 4(b)(2) of the Act sets out some of the responsibilities and steps that this authority entails, including evaluating information about the economic, national security, and other relevant impacts of designating particular areas as critical habitat; determining which among competing data on potential impacts is reliable; weighing the impacts of designation against the benefits of designating those areas and determining the weight that each should receive in the analysis; and making exclusion decisions based on the best scientific and commercial data available. The Final Rule potentially limits the Service from fulfilling aspects of this role by giving parties other than the Service, including proponents of particular exclusions, an outsized role in determining whether and how the Secretary will conduct exclusion analyses. This undue reliance on outside, and potentially directly affected parties in certain aspects of the process interferes with the Secretary's authority to evaluate and weigh the information provided by those parties in the course of determining what specific areas to designate as critical habitat for a species.

Second, the rigid ruleset established by the Final Rule, in all situations regardless of the specific facts, as to when and how the Secretary will exercise the discretion to exclude areas from critical habitat designations constrains the Service's discretion, thus decreasing the agency's ability to further the conservation of endangered and threatened species through designation of their critical habitats. Although the preamble and response to comments in the Final Rule refer to using the best available information and factoring in the case-specific information to support exclusion analyses, the regulatory text mandates a rigid process for when the Secretary will enter into an exclusion analysis, how weights are assigned to impacts, and when an area is excluded. Therefore, implementing the Final Rule undermines the Service's ability to further the conservation of the species because the ruleset applies in all situations regardless of the specific facts at issue or the conservation outcomes. We now recognize that implementing the Final Rule would result in competing and potentially conflicting legal requirements when we undertake an exclusion analysis. In section 4(b)(2) of the Act, Congress vested in the Secretary the authority and responsibility to assign weights to the impacts of designating particular areas as critical habitat. Automatically assigning weights based on information from parties other than the Secretary or their chain of command, including from parties that may have direct economic or other interests in the outcome of the exclusion analysis, regardless of whether those parties have expert or firsthand information, is in tension with Congress's decision to place that authority with the Secretary. Furthermore, the requirement that, unless we have rebutting information, the Secretary must assign weights to non-biological impacts based strictly on information from those entities constrains the Secretary's discretion to use their expert judgment and mandate to base designations on the best scientific data available. Prior to the Final Rule, we implemented the Policy and regulations at 50 CFR 424.19—neither of which set forth a rigid ruleset regarding the level of information needed for us to consider excluding areas, the weight we would assign to the information about impacts of designation, or any requirement to exclude areas under certain circumstances. The Service now recognizes that this approach achieved the balance that Congress sought when it enacted section 4(b)(2), furthering the conservation of the species while still allowing for exclusions of particular areas when the benefits of exclusion outweighed the benefits of inclusion.

Finally, we find that the Final Rule does not accomplish the goal of providing clarity and transparency. Section 4(b)(2) of the Act requires the Service to consider the economic, national security, and other relevant impacts of critical habitat designations. This responsibility makes it particularly important that potentially affected entities, including Federal agencies, Tribes, States, and other relevant stakeholders have a clear understanding of what information is relevant to the Secretary's evaluation of impacts of critical habitat designations and of how that information fits into the exclusion process. Having different 4(b)(2) regulations from those that NMFS applies (*i.e.,* 50 CFR 424.19) could result in different outcomes in analogous circumstances between the two agencies or multiple possible analyses for species over which the Services share jurisdiction (*e.g.,* sea turtle species, Atlantic salmon). This difference poses a significant risk of confusing other Federal agencies, Tribes, States, other potentially affected stakeholders and members of the public, and agency staff responsible for drafting critical habitat designations. We have not identified a science- or mission-based reason for separate regulations for exclusions from critical habitat that would outweigh that risk. Thus, it is preferable for the Service's section 4(b)(2) processes and standards to be consistent with those of NMFS, and it would not make sense for the Service to suggest that NMFS should adopt a framework that we are finding in this rulemaking to be at odds with the purposes, mandates, and structure of the Act. Therefore, we find that the previous approach—in which both agencies follow the joint implementing regulations at 50 CFR 424.19 and the

Policy—provides greater clarity for the public and Service staff.

We also considered whether to retain any portions of the regulation. However, the three reasons we identified for rescinding the Final Rule apply to all portions of the regulation. The three reasons are because the Final Rule undermines the Service's role as the expert agency; constrains the Service's discretion and decreases the agency's ability to further the conservation purposes of the Act; and fails to add clarity or transparency. As discussed in detail in the proposed rule, these reasons apply to all four of the key elements of the regulation—the requirement to undertake an exclusion analysis whenever a proponent of an exclusion provides credible information; the prescription for weighing the impacts; the treatment of Federal lands; and the requirement to exclude any area for which the benefits of exclusion outweigh the benefits of inclusion (86 FR 59346, 59346–51; October 27, 2021). Therefore, removing some combination of these elements and retaining the rest would still constrain the Secretary's discretion and thereby undermine the Service's role as the expert agency, decrease the agency's ability to further the conservation purposes of the Act, and fail to add clarity or transparency.

Even if we revised the standards within any of these elements, the crux of each element would still be to put in place requirements that constrain the Secretary's discretion and reduce the Service's ability to further the conservation purposes of the Act. For example, revising the ''credible information'' standard for triggering the requirement to undertake an exclusion analysis would still require the Service to undertake exclusion analyses in certain circumstances and thus constrain the agency's discretion to determine whether, based on the facts specific to each species and each potential exclusion, undertaking an exclusion analysis does further the conservation purposes of the Act. Also, replacing the ''credible information'' standard could merely serve to introduce a different new standard that may decrease clarity like the ''credible information'' standard does.

Additionally, the only other elements of the Final Rule are already directly addressed even without the regulations—through the Policy and in some cases the requirements of the Act. For example, paragraphs (d)(3) and (d)(4) of the Final Rule are almost entirely identical to sections 3 and 2, respectively, of the Policy. Therefore, if we were to remove all other parts of the Final Rule and retain paragraphs (d)(3) and (d)(4), that new regulation would not add any additional clarity; would be duplicative of, and potentially inconsistent with, those elements in the Policy; and would be confusing for the public as to which standards apply to each aspect of the Service's exclusion analyses. Furthermore, paragraph (a) of the Final Rule includes non-exhaustive lists of economic impacts and other relevant impacts. Regardless of whether these lists are in regulation, we are required by the Act to consider impacts in these categories. Including these elements in a revised regulation in part or in whole would not change the Service's consideration of impacts under section 4(b)(2) of the Act.

The Final Rule was unnecessary for achieving its intended purpose of increasing clarity and transparency to the public regarding when and how we will exclude areas. The *Weyerhaeuser* decision made clear that we need to explain decisions not to exclude areas from critical habitat, and even before that decision, we acknowledged in the preamble to the Policy that we would do so (81 FR 7234; February 11, 2016) (''If the Services do not exclude an area that has been requested to be excluded through public comment, the Services will respond to this request. However, although the Services will explain their rationale for not excluding a particular area, that decision is committed to agency discretion.''). Therefore, we will always explain our decisions not to exclude particular areas for which exclusion has been requested. Our explanation will take into account the best scientific data available, including the strength of the information provided by the proponent in support of the exclusion. Although we stated in the Final Rule that *Weyerhaeuser* (and the accompanying need for clarity and transparency about the analyses underlying our exclusion and non-exclusion decisions) was, in part, its impetus, we will always explain our decisions not to exclude particular areas for which exclusion has been requested, even without the Final Rule in place. The Policy and the regulations at 50 CFR 424.19 already provided sufficient detail regarding the analyses we undertake when considering and conducting exclusions, and we have now concluded that the Final Rule was unnecessary and that it increased confusion and decreased clarity by articulating an approach that differed from both NMFS's approach and the jointly promulgated Policy.

Because we have made the decision to rescind the Final Rule, the Policy and joint regulations are no longer superseded, and the Service's critical habitat and exclusions decisions will follow the Policy and comply with the regulations at 50 CFR 424.19. In adopting the specific changes to the regulations in this document and setting out the accompanying clarifying discussion in this preamble, the Service is adopting prospective standards only. Nothing in this rescission is intended to require that any previously finalized critical habitat designations or exclusion decisions be reevaluated on the basis of this final decision.

Summary of Comments and Responses

In our proposed rule published on October 27, 2021 (86 FR 59346), we requested public comments on the provisions of the proposed rule. After considering several requests for extensions of the public comment period beyond the original 30 days, we decided to extend the comment period an additional 15 days to December 13, 2021. During the public comment period, we received a request for public hearings. However, public hearings are not required for regulation revisions of this type, and we elected not to hold public hearings.

By the close of the public comment period on December 13, 2021, we had received approximately 29,000 public submissions. We received comments from a range of entities, including individual members of the public, States, Tribes, industry organizations, legal foundations and firms, and environmental organizations. The vast majority of the comments (~28,800) were similar statements from individuals indicating their general support for rescission of the rule.

We reviewed and considered all public comments prior to developing this final rule. We provide summaries of substantive comments and our responses below; we combined similar comments where appropriate. We did not, however, consider or respond to comments that are not relevant and are beyond the scope of this particular rulemaking. For example, we did not discuss and respond to comments regarding our joint proposed rule with NMFS to rescind the regulatory definition of ''habitat'' (see 86 FR 59353, October 27, 2021). We also received comments that we should revise certain parts of 50 CFR 424.19 (*e.g.,* revisiting the incremental approach to considering economic impacts of a critical habitat designation; defining economic impact), and certain portions of the Policy (including the treatment of conservation agreements and habitat conservation plans; revising the approach to treatment of Federal lands; requiring

formal documentation of exclusion analyses for each designation; and formalizing coordination with relevant State wildlife management agencies, Tribes, and local governments when undertaking a designation of critical habitat). Revising the joint implementing regulations at 50 CFR 424.19 or the Policy is outside the scope of this specific Service-only action.

Comment 1: Commenters stated that the proposed rule is arbitrary and capricious because the Service did not provide a substantive, reasoned explanation for the change of position from the Final Rule.

Response: We acknowledge the well-established principle that agencies must provide a reasoned explanation for its changes in position. *E.g., Coalition,* 2022 WL 1073346, at 12 *(citing Encino Motorcars, LLC* v. *Navarro, 136 S. Ct. 2117* (2016)). We have satisfied that requirement in this final rule and in the proposed rule. We refer the commenters to the proposed rule section ''Rationale for Rescission'' and the summary in this final rule, both of which set forth our detailed explanation for rescinding the Final Rule. To summarize, we now find three ways in which the Final Rule is problematic. First, it potentially limits or undermines the Service's role as the expert agency responsible for administering the Act because it potentially gives undue weight to outside parties in guiding the Secretary's statutory authority to exclude areas from critical habitat designations. Second, it constrains the Service's discretion because it employs a rigid ruleset in all situations regardless of the specific facts as to when and how the Secretary will exercise the discretion to exclude areas from critical habitat designations. Finally, it does not accomplish our previously stated goal of providing clarity and transparency.

Comment 2: Commenters stated that rescinding the Final Rule will negatively affect those who might make decisions in reliance on application of the Final Rule now (*e.g.,* third parties having reliance interests).

Response: The Final Rule became effective on January 19, 2021. On January 20, 2021, the President issued E.O. 13990 and an associated Fact Sheet with a non-exhaustive list of agency actions, directing the Services to review the Final Rule and other regulations. The Service publicly announced on June 4, 2021, that they would propose to rescind the Final Rule. In the proposal to rescind the rule, we did not identify any affected reliance interests because we were unaware that any existed, especially due to the rule's limited practical applicability and the limited time it has been in effect.

Although several commenters expressed the possibility that there may have been reliance on the Final Rule, none provided any specific examples of actual reliance, nor did any articulate why such reliance would have been reasonable given the limited time that elapsed between the Final Rule's effective date and when it was identified for reconsideration. The Final Rule has been in place for a relatively short time and has a potential applicability on a small number of critical habitat designations. We did not identify any instances of a third party making a decision relying on application of the Final Rule with outcomes anticipated to be different than if we relied on the regulations at 50 CFR 424.19. Even if there has been reliance on the Final Rule, any information gathered by proponents of an exclusion and submitted to the Service after the Final Rule is rescinded would be fully considered under 424.19 regulations and the Policy. Therefore, we conclude that rescinding the Final Rule and resuming implementation of the regulations at 424.19 and the Policy will not affect any reliance interests.

Comment 3: Commenters suggested that in proposing the rescission, the Service did not allow sufficient time for implementation and evaluation of the effects of the regulation. The Service did not provide examples of how the Final Rule has constrained the agency discretion or led to decisions that are contrary to the Act or other Federal policy. Furthermore, the Service's rationale for rescission is largely unsupported, inconsistent with the Act, and is not capable of being ''ascribed to a difference in view or the product of agency expertise.''

Response: We acknowledge that the Final Rule has been in place for a relatively short time and only has a potential bearing on the potentially limited set of designations where there is a factual basis to support exclusions of particular areas. Nevertheless, although there has been limited opportunity for the Service to provide tangible examples of how this regulation has affected a particular designation, we do not need to wait until we have evidence of such effects in order to rescind the Final Rule that we now conclude was ill-advised. The Federal Government does not require that regulations must have been in place for a period of time for an agency to have the authority to rescind them, nor must an agency provide examples of when a regulation caused confusion. Rather, the standard for rescinding previous regulations is the same standard as for promulgating new regulations, and we have met that standard—making a reasonable decision and providing an explanation for the decision that draws a rational connection between the facts found and the decision made.

Executive Order 13990, issued on January 20, 2021, provided the impetus for our review of the Final Rule. We are rescinding the Final Rule on the basis of our legal authority under the Act (16 U.S.C. 1531 *et seq.*). We have provided a rational explanation in the proposed rule and in this document detailing the multiple reasons why we are rescinding the Final Rule. After reviewing the regulation and its preamble, we find the Final Rule to be problematic because it unduly constrains the Service's discretion in administering the Act, potentially limiting or undermining the Service's role as the expert agency. We also found that the rigid rule sets in the Final Rule constrain the Service's ability to further the conservation of endangered and threatened species through designation of their critical habitats. Moreover, rather than providing clarity and transparency, the Final Rule introduces additional confusion. Because these shortcomings cannot be addressed by putting further effort into revising the Final Rule, we have determined that it is in the best interests of stakeholders and for the conservation purposes of the Act to minimize the time that the Final Rule is in effect by swiftly rescinding it.

Comment 4: Commenters noted that, in their opinion, the Final Rule greatly increased transparency of the exclusion process because it gave substance to the Service's decisionmaking process and allowed Federal agencies, Tribes, States, and other stakeholders to know how the Service will weigh factors when considering exclusion from critical habitat. Further, commenters stated that one benefit of the Final Rule was helping to ensure that the Service provides sufficient justification for exclusion decisions, and the Service has not explained how making the process more difficult to follow by returning to the Policy would address the Service's concerns about needing to be more ''deliberate and transparent'' in decisionmaking regarding exclusions from critical habitat. Additionally, commenters stated that, if the Final Rule is rescinded, regulatory transparency will be reduced, and this situation would be inconsistent with the Supreme Court ruling in *Weyerhaeuser* because decisions regarding exclusion would be shrouded by agency discretion until and unless a party seeks judicial review. Additionally, counter to the Supreme

Court ruling, the Policy specifically states that decisions not to exclude particular areas from critical habitat are committed to agency discretion and therefore not subject to judicial review.

Response: As described above, we will resume implementation of the Policy and 50 CFR 424.19, which set forth a stepwise approach to conducting the mandatory considerations of the economic impact, the impact on national and homeland security, and other relevant impacts of the designation of critical habitat without unduly constraining the Service's discretion as to when to exclude areas under section 4(b)(2) of the Act. The primary focus of the Policy describes how we consider ''other relevant impacts,'' including conservation plans and partnerships, when designating critical habitat, which is similar to how the Final Rule addressed these issues. Because the Policy does not limit our consideration of information in an exclusion analysis, it allows us to consider any fact pattern for exclusion that may be raised by commenters, including the categories of ''other relevant impacts'' defined by the Final Rule. By removing the Final Rule, we are not removing our responsibility to evaluate information and make a rational decision regarding exclusion of particular areas. Nor will rescission of the Final Rule result in less transparency or inconsistency with *Weyerhaeuser,* as the commenter asserts. Rather, we will continue to critically evaluate information presented by proponents of exclusion and will decide whether to enter into a discretionary exclusion analysis based on reasonable and reliable information regarding potential impacts of designating critical habitat. Finally, even though the Policy states that decisions not to exclude are not reviewable, we recognize the Supreme Court's ruling in *Weyerhaeuser,* and we will continue to explain our decisions not to exclude particular areas from designations of critical habitat for which exclusion has been requested.

Comment 5: Commenters noted that if, as the Service claims, the phrase ''credible information'' is vague, then in comparison the phrase ''best available information'' is no clearer. Additionally, contrary to the rationale in our proposal to rescind the Final Rule, there is nothing vague about commonly understood terms. Commenters also noted that there was no discussion of the ''confusion'' noted in the proposed rule, but there should be, including who was confused, whether the confusion was resolved, and whether it was well-founded.

Response: The phrase ''credible information'' is only part of the regulatory language included in § 17.90(c)(2)(i) of the Final Rule, and the entirety of what we refer to as the ''credible information standard'' is: ''credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion for that particular area.'' We find multiple parts of this standard to be vague. For instance, ''a benefit of exclusion'' could be interpreted to mean almost anything to a proponent of an exclusion, which we find to be unhelpful and vague as the basis for the standard to judge whether the Service should enter into the discretionary exclusion analysis. In addition, the word ''meaningful'' is subjective and open-ended in this context.

We do not mean to suggest that any degree of vagueness is disqualifying for regulatory language. But when the stated goals of a regulation include clarity and transparency, the degree of vagueness is at least relevant to considering the efficacy of the regulation. We do not agree that the phrase ''best scientific data available'' is as vague as the phrase ''credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion for that particular area.'' The phrase ''best scientific data available'' is the standard in the Act that applies to the designation of critical habitat, and numerous court decisions have clarified what constitutes the best scientific data available. The courts have made clear, for example, that the phrase ''on the basis of the best scientific data available'' establishes a standard that ''prohibits [the Service] from disregarding available scientific data that is in some way better than the evidence it relies upon''; the standard also allows the Service to rely on data that qualifies as the best scientific data available even if that data is quite inconclusive. *E.g., Kern County Farm Bureau* v. *Allen,* 450 F.3d 1072, 1080–81 (9th Cir. 2006); *City of Las Vegas* v. *Lujan,* 891 F.2d 927, 933 (D.C. Cir. 1989); *Southwest Center for Biological Diversity* v. *Babbitt,* 215 F.3d 58, 60 (D.C. Cir. 2000).

Upon our review of the Final Rule, we determined that establishing a new information standard that could be interpreted differently from the standard in the Act does not meet our stated goal of transparency and clarity. The Service has a long-standing track record of basing our classification decisions and critical habitat designations on the best scientific and commercial data available, and we find that it is unnecessary and confusing to define a separate information standard for the purposes of section 4(b)(2) exclusion analyses.

Comment 6: Commenters stated that the ''credible information'' standard appropriately placed the burden on the Service for evaluation of information used in exclusion analyses and that the Final Rule properly ensures evaluation of exclusions where credible information is presented. Furthermore, commenters noted that if, as the Service claims, even without the Final Rule the Service is already required to consider reasonable information presented by a proponent of an exclusion, there would be no additional burden of considering that information under the ''credible information'' standard. The Service appears to misread both the Act's data standard as well as the Final Rule's ''credible evidence standard'' when asserting that the credible information standard is in conflict with the Act's best scientific and commercial data available standard.

Response: We agree with the commenter that we must assess information submitted in support of a potential exclusion regardless of whether the Final Rule is rescinded. While the Policy does not contain a requirement to consider and evaluate information submitted in support of exclusions, we will always evaluate information submitted by proponents of exclusions as mandated by section 4(b)(2) of the Act to consider ''other relevant impacts.'' Additionally, the Policy sets forth general guidelines for considering certain types of information and establishes a preference for assigning ''great weight'' to certain types of fact patterns, including demonstrated partnerships, including those with Tribes; the existence of operative conservation plans permitted under section 10 of the Act; and national-security and homeland-security impacts. The Policy also allows consideration of other fact patterns that may provide a rational basis by which we may exclude particular areas of critical habitat.

Furthermore, we are aware that, under the *Weyerhaeuser* ruling, any time that we make a decision not to exclude a particular area, that decision will be judicially reviewable for abuse of discretion. Therefore, in the final rule for any particular critical habitat designation, we will clearly explain the basis for our decision not to exclude any particular area for which exclusion has been requested. The commenter asserts that we misread the Act's data standard, as well as the Final Rule's ''credible

evidence'' standard; however, we did not use the phrase ''credible evidence'' (the term in the regulation is ''credible information'') and have only described the ''best scientific data available'' standard as the one that applies to the process of designations of critical habitat. We did not state that the ''credible information'' standard conflicts with the ''best scientific data available''; rather, we stated that having a different, and vague, standard is not helpful, nor does it increase transparency.

Comment 7: Commenters stated that, even with the provision of the Final Rule giving weight to economic and other non-scientific analyses consistent with the weights described by exclusion proponents, there would be no impact on the Service's evaluation of scientific or biological information. They asserted that, contrary to the position of the proposed rescission rule, the Final Rule protects the Service's discretion as to when an exclusion analysis would be undertaken and what information would be considered in that analysis. Taken together, the Final Rule makes clear that the Service is the ultimate arbiter of whether a particular area should be excluded and retains the Service's ability to rely on the best scientific data available and even to rebut non-biological data submitted by outside parties.

Response: The Final Rule provides that the weight given to non-biological impacts will be consistent with purported expert or firsthand knowledge unless the Secretary has information to rebut that weight. We do not agree that the Final Rule protected the Secretary's discretion as to when an analysis would be undertaken. Because the credible-information standard in the Final Rule is a low bar, in cases where a proponent presents any benefit of exclusion, regardless of the level of impact, the Service would be committing to enter into a discretionary exclusion analysis absent any information to rebut. And further, once in the discretionary exclusion analysis, if the analysis concluded that the benefits of exclusion outweigh benefits of inclusion, the Service would be committing to exclude that area, unless the exclusion would result in the extinction of the species. Thus, we also disagree with the commenters that the regulations taken together protected discretion as to when we would exclude. We would be required to weight impacts based on information that outside proponents provide and then required to exclude any area for which the weight of the impact is greater, or merely appears greater based solely on the expert or first-hand information that the proponents provide, than the weight of the benefits of inclusion. Therefore, it does not logically follow that the Service would be the ''ultimate arbiter'' of whether a particular area should be excluded.

Comment 8: Commenters stated that the Service has expertise in a wide array of biological science disciplines but that the agency does not have a similar expertise in areas such as economics, finance, employment, or community planning. This lack of expertise is demonstrated by the fact that the Service routinely uses outside contractors to assess the potential economic impact of critical habitat designations. Commenters also stated that, by rescinding the Final Rule, the Service is assuming that other entities do not have more expertise in certain subjects and that the agency is implying that it alone has the requisite conservation expertise and knowledge of the Act to support critical habitat exclusions. Similarly, commenters stated that the Final Rule does not give undue weight to outside parties, citing the review of information submitted in the petition process as an example of where the Service already reviews and evaluates information from outside parties. A commenter stated that Congress recognized the need for outside coordination with State, Tribal, and local governments, in particular in section 6 and other provisions, when drafting the Act.

Response: We acknowledge that we regularly use outside entities to develop economic analyses of critical habitat designations. We also routinely seek out expertise from community planners to get the best available information as it pertains to development projects within areas that support the conservation of the species. As part of our normal process, we incorporate all of this information into our draft economic analysis, and we make it available with the proposed critical habitat designation for public comment; we further consider any additional comment and information related to the economic analysis when we finalize critical habitat rules. When we receive comments and information from proponents of an exclusion, we always consider their comments regarding potential impacts from the designation of critical habitat to their activities or operations. It is our responsibility to evaluate the information, assign appropriate weights to any impacts in light of the information we have received, and weigh those impacts against the benefits of designating any areas as critical habitat so that we can ensure that critical habitat designations contribute to the conservation of species and further the conservation purposes of the Act. We agree with the commenter that Congress recognized the importance of coordination with State, Tribal, and local governments; therefore, we make it part of our process to coordinate with stakeholders throughout the process of designating critical habitat. Rescinding the Final Rule and resuming implementation of the Policy and 50 CFR 424.19 will not change this important aspect of our process to designate critical habitat.

Comment 9: Commenters stated that reverting to the Policy does not remove issues with weighting of impacts because the Policy states the Service will ''give great weight'' to certain types or categories of impacts.

Response: The phrasing in the Policy noted by the commenter, ''give great weight,'' is an indication of how we intend to weight impacts in those instances. The Policy includes categories of impacts where we intend to ''give great weight'' to the benefits of exclusion for situations where we have a general knowledge and experience that the benefits of exclusion may outweigh the benefits of inclusion. This phrase intends to be transparent, without being predecisional, about how we will weight information in the discretionary exclusion analysis. It also preserves discretion because it specifies that the Secretary will ''give great weight'' to particular concerns ''in analyzing the benefits of exclusion.'' In contrast, the Final Rule requires the Secretary to give a weight that is consistent with purported expert or firsthand information received from outside parties, which has the effect of delegating to those outside parties the Service's authority to weight the specified categories of impacts when we analyze the benefits of inclusion.

Comment 10: A commenter suggested that by instituting a process for soliciting and considering outside expertise, the Final Rule facilitated the requirement in the Act to use the best scientific and commercial data available in making decisions regarding critical habitat designations. If the Service rescinds the Final Rule, it would undercut the statutory mandate to use the best scientific and commercial data available.

Response: As part of our routine process in designating critical habitat, regardless of the status of the Final Rule, we consider all comments and information submitted by proponents of exclusions of specific areas from critical habitat designations. Rescinding the Final Rule will not undercut our

requirement to base our designations on the best scientific data available (considering the economic, national security, and other relevant impacts) when making determinations for critical habitat because we have always solicited information regarding the impacts of critical habitat designations from stakeholders through the rulemaking process and will continue to do so in the future.

Comment 11: Some commenters expressed concern that the commitment to consider non-biological impacts identified by State or local governments in the Final Rule would no longer be in place if the Final Rule is rescinded. This outcome would potentially be in tension with the Act, which states the Secretary is required to ''cooperate to the maximum extent practicable with the States'' and would discount local knowledge about impacts. Specifically, a commenter noted that the current administration's commitment to including traditional ecological knowledge in Federal decisionmaking is a marked contrast to the proposed rule's criticism of giving local communities an outsized role in critical habitat designations.

Response: With the rescission of the Final Rule, we will continue to consider non-biological impacts identified by State or local governments or Tribal entities just as we did before the Final Rule was in place. Section 4(b)(2) of the Act mandates that we consider the economic and other relevant impacts of designating critical habitat. Our regulations at 50 CFR 424.19 and the Policy (*e.g.,* provisions 4 and 7) allow us to consider the potential impacts to these entities. To comply with this mandate, we always conduct an economic analysis of the proposed designation, which includes, if appropriate, the incremental impact of a designation of critical habitat to State or local governments or Tribal entities. In addition, we make our economic analysis available with the proposed designation of critical habitat and solicit public comments on both. Through this public notice-and-comment process, we address all comments received and ensure that we have considered all relevant impacts, including any impacts to State or local governments or Tribal entities.

Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997) acknowledges that we consider traditional knowledge (TK) in Federal land management decisionmaking. Since the issuance of S.O. 3206, we have routinely considered TK in the process of designating critical habitat. Our use of TK is a matter of using the best available information to inform our decisionmaking. Rescinding the Final Rule does not change our commitment to considering impacts identified by State or local governments or Tribal entities or to following the guidelines in S.O. 3206.

Comment 12: Multiple commenters disagreed with our proposal to return to the Policy's approach to treatment of Federal lands in designations of critical habitat. They further stated that we should retain the same treatment of lands regardless of ownership, in part because the Act's requirement to consider economic impacts, the impact on national security, and other relevant impacts is not limited to specific land ownership. At least one commenter expressed concern that the Policy does not provide for non-Federal permittees, lessees, or contractors to request exclusions based on economic impacts. Some stated that the Act, other regulations, or courts do not require Federal land to be designated as critical habitat. Others stated that we did not provide adequate rationale for the change from the Final Rule to proposing to adopt the Policy's approach on Federal lands. Other commenters noted that prioritizing inclusion of Federal lands in critical habitat was reasonable. Some said that because Federal land management decisions necessarily have the Federal nexus required to trigger consultation, a designation on Federal lands is more likely to result in some benefit to the species. At least one commenter found this to be reasonable based upon the affirmative duties of Federal land managers under section 7(a)(1) of the Act.

Response: Upon returning to implementing the Policy, we will continue to consider the economic impacts, the impacts on national security, and any other relevant impacts regardless of landownership as required in the Act. The Policy does not limit what exclusions proponents may request, nor does it prohibit the Service from excluding particular areas on the basis of fact patterns not enumerated in the Policy. Rather, the Policy sets out general principles and considerations that guide the Service's exclusion analyses. The Policy states that Federal lands should be prioritized to support the recovery of species, because there is always a nexus for section 7 consultation on Federal lands; in addition, by generally not excluding Federal lands, any real or perceived regulatory burdens on non-Federal lands can be minimized. However, nothing in the Policy requires that Federal lands be categorically designated as critical habitat, and the Policy does not prohibit exclusion of Federal lands. Therefore, depending on the species-specific and situation-specific facts, we may exclude areas of critical habitat from designations on Federal lands, but the Policy indicates that in most cases we would expect that the benefits of inclusion of Federal lands would be greater than the benefits of exclusion.

As stated in the proposed rule, the Secretary would retain the discretion to exclude Federal lands when the factual circumstances merit it. We find that the approach in the Policy better equips the Service with the flexibility necessary to account for the wide variability of circumstances in which the Secretary makes exclusion decisions—variability in the needs of the species, in the geography and quality of critical habitat areas, and of land-ownership arrangements. For example, while the transactional costs of consultation with Federal agencies tend to be a relatively minor cost in most situations, and while activities on Federal lands automatically have a Federal nexus (which usually would require consultation and thus increase the potential for conservation benefits if those lands are designated), we have found that in some instances the benefits of exclusion nevertheless outweigh the benefits of designating those areas. In those situations when the benefits of excluding Federal lands outweigh the benefits of designating them as critical habitat, the Policy provides sufficient discretion for the Secretary to exclude Federal lands. The rescission of the Final Rule will not change our mandatory consideration of those impacts on Federal lands. Further, consistent with *Weyerhaeuser,* in those situations where we consider exclusion but do not exclude particular areas, we will explain our rationale for not excluding particular areas for which exclusion has been requested. We refer the commenter to the rationale in the proposed rule and in this final rule, both of which set forth our detailed explanation for rescinding the Final Rule.

Comment 13: Commenters stated that, prior to the Final Rule, the Service implemented the Act in a manner that effectively removed the requirement that the Service consider economic and other impacts of critical habitat designations. Other commenters disagreed that the Service's consideration of economic and other factors is at all discretionary under section 4(b)(2) of the Act. They suggested that, after conducting a balancing analysis, if the Service

concludes that the benefits of exclusion outweigh those of inclusion, then the reasonable conclusion is that the area should be excluded so long as the exclusions will not result in the extinction of the species. These commenters stated that if the Service is seeking to retain discretion not to exclude an area when the benefits of exclusion outweigh those of inclusion, this justification is incompatible with the Act, and unsupportable under the APA.

Response: The Act does not require us to undertake an exclusion analysis; however, section 4(b)(2) of the Act requires that we consider the economic impact, the impact on national security, and any other relevant impacts. We have and will continue to comply with this mandatory consideration prior to finalizing any designation of critical habitat. The implementing regulations at 50 CFR 424.19 also require that we make available the draft economic analysis concurrent with each proposed critical habitat designation. We have, and always will, consider the economic impact of designating critical habitat, and we do that through completing an economic analysis of each designation of critical habitat, and then considering that economic analysis in deciding whether to engage in an exclusion analysis under the second sentence of section 4(b)(2).

By the express language in section 4(b)(2) in the Act, other aspects of exclusion decisions are discretionary. For example, the Secretary has discretion on when to undertake an exclusion analysis, the assignments of weights, and making the final exclusion decision. Simply weighting every non-biological impact according to outside parties could constrain the Secretary's discretion and could conflict with the conservation purposes of the Act and our responsibility to implement the Act. Therefore, we do not intend to delegate to outside parties our authority to assign weights to non-biological impacts. If, after weighting and weighing the benefits of inclusion and the benefits of exclusion, we determine that the benefits of exclusion outweigh those of inclusion and that exclusion would not result in the extinction of the species, we agree that exclusion is generally appropriate.

However, determining the benefits of exclusion and the benefits of inclusion is not always straightforward. Benefits of exclusion are primarily the avoidance of economic costs (*e.g.,* the incremental costs associated with consultations related to impacts to critical habitat and potentially implementing reasonable and prudent alternatives). Benefits of inclusion are generally the support of conservation and recovery of species (*e.g.,* the requirement of Federal agencies to ensure that actions that they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat). Including a particular area within critical habitat may also have one or more other benefits, potentially including indirect benefits. While some of these benefits of inclusion can be quantified and monetized, others may be hard to quantify or monetize but may nevertheless be significant. Often, the weighing analysis requires a comparison of the benefits of avoiding quantified economic costs against the benefits of maintaining qualitative value for conservation and recovery. Comparisons such as these are not precise, and it may not be obvious that the benefits of inclusion outweigh those of exclusion. But we do not take this relative imprecision to suggest that conservation benefits are any less important or worthy of inclusion and consideration when weighing costs and benefits. Indeed, insofar as we may not be able to quantify precisely the incremental benefits of a designation of critical habitat, retaining the discretion not to exclude an area even if the quantified benefits of exclusion appear to outweigh the quantified benefits of inclusion allows the Service to account for those kinds of imprecisions.

Further, the statute specifically states that the decision to exclude is discretionary: ''The Secretary *may* exclude any area from critical habitat . . ..'' (*emphasis added*). Finally, the decision in *Weyerhaeuser* acknowledged that the Service has discretion to exclude so long as the exclusion is reasonably applied and supported by the decisional record. Additionally, the decision in *Weyerhaeuser* made clear that a decision not to undertake an exclusion analysis is reviewable for abuse of agency discretion. Therefore, if we do not undertake an exclusion analysis despite a request for exclusion or supporting information having been submitted, we will explain our rationale, and any reviewing court could review our decision and determine whether we abused our discretion. For any exclusion decisions, we will fully explain our rationale and provide a detailed explanation of our analysis consistent with the requirements of the APA.

Comment 14: Some commenters stated that the Final Rule does not limit the Service's ability to conserve listed species in any areas that would be excluded from a designation of critical habitat if the ''shall'' exclude language is retained in regulation. The Service would retain the flexibility to consider the specific facts at issue or the conservation outcomes on a fact-specific basis with the Final Rule in place.

Response: As described in the preamble to both the proposed and this final rule, we find that the ''shall exclude'' language of the Final Rule constrains the Secretary's discretion once we make a determination that the benefits of exclusion outweigh, or appear to outweigh based on the expert or first-hand information that proponents provide, the benefits of inclusion. Congress clearly did not intend to constrain the Secretary's discretion in this manner, or the Act would not contain the provision that the Secretary ''may exclude.'' Furthermore, the Solicitor's Memorandum Opinion M–37016, ''The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act'' (the Solicitor's M-Opinion; October 3, 2008), underscores the Secretary's discretion to exclude areas as a result of the statute's inclusion of the phrase ''may exclude'' (pp. 6–9). We also find that the ''shall exclude'' language, combined with the allowance of weights of impacts to be determined by outside parties, is likely to further constrain the Secretary's discretion in certain cases. We recognize regulations are intended to interpret statutory language that they implement. The Final Rule stated that the ''shall exclude'' language was an exercise of Secretarial discretion. However, in this instance, we find that the way in which the Final Rule constrains the Secretary's discretion is potentially in conflict with our responsibilities to administer the Act and fails to take into account the species-specific and situation-specific facts that are necessary to ensure that critical habitat designations contribute to the conservation of listed species.

Comment 15: Some commenters stated that the Service's approach to critical habitat designations must reflect the requirements of section 4(b)(2) of the Act in consideration of the economic impact and relative benefits before deciding whether to exclude an area from critical habitat.

Response: The Act in section 4(b)(2) and our implementing regulations at 50 CFR 424.19 set forth clear requirements for considering the economic impact, the impact on national security, and any other relevant impacts of including particular areas within designated critical habitat. We always comply with this mandatory obligation to consider these impacts prior to finalizing any

designation of critical habitat. Rescinding the Final Rule will not change our practice of considering these impacts or eliminate the statutory requirement to consider these impacts. We find that rescinding the Final Rule better reflects the requirements of section 4(b)(2) of the Act because applying 50 CFR 424.19 and the Policy will retain the requirement to consider the mandatory impacts and preserve the Secretary's discretion to exclude particular areas if the benefits of exclusion outweigh the benefits of inclusion, so long as exclusion will not result in extinction of the species.

Comment 16: Commenters stated that the economic impact of a designation of critical habitat is an important consideration, but by itself the economic impact can fail to capture the broader impact of a critical habitat designation on a community. Commenters contend that a flaw with the proposed rescission is that removing the discussion of what ''other relevant impacts'' includes may cause impacts to communities to take a back seat in exclusion analyses.

Response: Under section 4(b)(2) of the Act, ''other relevant impact'' is a separate entity in the text and has equal importance with ''economic impact'' and the ''impact on national security.'' We always consider these categories of impacts, and rescinding the Final Rule will not change that approach. The Policy describes the types of categories of impacts that we may consider when evaluating the impacts of a critical habitat designation. The Policy provides examples such as plans and partnerships, but in no way excludes considerations of impacts to communities. Furthermore, the Solicitor's M-Opinion thoroughly describes the Secretary's broad discretion to determine what other relevant impacts might be relevant (p. 12). If we receive requests for exclusion of particular areas from a designation of critical habitat based on impacts to communities, we will fully consider that information and provide a rational basis to support our decision to exclude or not exclude based on this or other available information.

Comment 17: Some commenters stated that the Service must consider how imposition of costs on private landowners will affect their incentive to conserve, maintain, or restore habitat for species. Conversely, the Service must also consider the conservation costs of critical habitat—that is, whether landowners may preemptively destroy habitat or forgo restoration to prevent habitat features from developing or to avoid perceived stigma effects of a designation. Conservation benefits also need to be considered, but the Service often concludes designations of critical habitat will have little benefit.

Response: The designation of particular areas as critical habitat does not impose obligations to conserve, preserve, or restore any area designated as critical habitat for a species. Where there is a Federal nexus, the Federal agency must ensure their actions do not destroy or adversely modify designated critical habitat. We are aware that there may be perceptional effects that result in economic impacts. For example, people may be reluctant to purchase lands that are identified as critical habitat, or landowners may change their land use or planning as a result of the area being designated as critical habitat. Our economic analysis evaluates the potential for those effects, and we describe the perceptional effects in our analysis. Actions taken to preemptively destroy habitat or to prevent habitat features from developing to prevent an area from being considered as critical habitat could result in a violation of section 9 of the Act even if an area is not designated as critical habitat.

We also recognize that there can be some risk to species or their habitat associated with drawing lines on a map to define areas of critical habitat but acknowledge that the effects from section 7 consultation provide a conservation benefit. In some instances, we will determine that a designation of critical habitat is not prudent because there is evidence of a threat of collection of the species or other threats would be exacerbated due to the publication of maps detailing the location of the species.

In instances where critical habitat is proposed, we look for the existence of partnerships, plans, or agreements that may provide a conservation benefit for the species. If appropriate, and after conducting an exclusion analysis, we may find that the benefits of exclusion outweigh the benefits of inclusion. So long as the exclusion will not result in the extinction of the species concerned, we have always excluded such areas. These conservation mechanisms incentivize landowners to enter into these types of agreements to further the conservation of species. Additionally, our economic analysis includes an assessment of the benefits of the designation of critical habitat, and where possible we quantify those benefits; however, in most cases we qualitatively describe the benefits in terms of conservation value of the designation of the particular areas of critical habitat.

Comment 18: Several commenters found our argument that having different regulations than NMFS created confusion to be unpersuasive. Some stated that the Final Rule would result in the Service being more similar to NMFS in terms of actually conducting exclusion analyses and that absent the regulations there would be no binding guidance or requirement for the Service to comply with section 4(b)(2) of the Act. Commenters stated that wanting to be consistent with NMFS is not a compelling rationale and cited the Service's June 4, 2021, intention to return to using blanket 4(d) rules, which would then be inconsistent with NMFS' approach.

Response: As discussed above, differences with NMFS poses a significant risk of confusing other Federal agencies, Tribes, States, other potentially affected stakeholders and members of the public, and agency staff responsible for drafting critical habitat designations. We have not identified a science- or mission-based reason for separate regulations for exclusions from critical habitat that would outweigh that risk.

Whether it is confusing to the public if the Service applies different regulations than NMFS depends on the standards and processes contained in each particular regulation. In some situations, the regulated community is best served if the agencies have the same regulations and policy; this scenario applies to the regulations that make clear to proponents of exclusions how the information they submit will be considered, because consistency makes it easier for proponents of exclusions or other members of the public to know what information to submit. However, in other situations it may make sense for the Service and NMFS to apply their own regulations; this approach applies to regulations under section 4(d) of the Act, because the protection needs vary between species, and the nature, scope, and scale of the protective regulations that are needed for marine species subject to NMFS' jurisdiction may differ considerably from the needs of species subject to the Service's jurisdiction. In addition, regardless of whether the Service reinstates ''blanket'' 4(d) rules, we will undertake a species-specific analysis to determine what protections are necessary and advisable for the species at hand as described in section 4(d) of the Act, resulting in a similar process as NMFS uses.

After rescinding this regulation, both Services will apply the implementing regulations at 50 CFR 424.19 and the Policy. This will avoid the potential for different implementation of section

4(b)(2) of the Act between the agencies and for confusion on the part of proponents of exclusions regarding what information to submit and what to expect from the exclusion process.

With the rescission of the Final Rule, the Service will continue to comply with section 4(b)(2) of the Act when designating critical habitat. The Service routinely conducts exclusion analyses: more than 40 percent of our final critical habitat rules have exclusion analyses. Regardless of any regulation, we must document our rationale for decisions not to exclude areas from critical habitat in the face of requests for exclusions because the *Weyerhaeuser* decision held that decisions not to exclude are judicially reviewable.

Comment 19: Commenters stated that the Service should affirm that we will give meaningful consideration to information provided by Alaska Native Corporations (ANCs) and will address impacts on lands owned by Alaska Natives, including lands covered by the Alaska Native Claims Settlement Act, when designating critical habitat.

Response: We value information provided by ANCs and will always consider comments and information provided by ANCs when we are proposing and finalizing designations of critical habitat. We consider impacts on all native-owned lands, including on lands owned by Alaska Natives, to categorically fall within the other relevant impacts that section 4(b)(2) of the Act requires that we consider when designating critical habitat. We will always consider requests for exclusion from ANCs, and any decision not to exclude will be fully explained in our final rule consistent with the *Weyerhaeuser* ruling.

Comment 20: Numerous commenters stated that the Service should revise the Final Rule rather than rescind it in its entirety, consistent with Supreme Court rulings (*e.g.,* in *Dep't of Homeland Security* v. *Regents of the Univ. of California,* 140 S. Ct. 1891 (2020) (*Regents*) and *FCC* v. *Fox Television.* 129 S. Ct. 1800 (2009) (*Fox Television*)). In some instances, commenters included specific suggestions to keep existing regulatory language, add new regulatory language, and revise or clarify particular provisions of the regulations. For example, some commenters suggested that we add additional examples of categories that could be considered as bases for exclusions, requested that we clarify when the rigid ruleset would not be appropriate to use, or asked that we further define terms such as ''national security.'' In other cases, the commenters did not provide detailed recommendations. Others noted that the Service should retain the Final Rule and that NMFS should adopt corresponding regulations.

Response: We reviewed and considered all suggestions of how to revise the regulations instead of rescinding them. We find that the suggestions of specific possible revisions or clarifications support our conclusion that the Final Rule did not provide the clarity or transparency that was intended. For example, there would be no need to identify additional bases for exclusions, eliminate the rigid rulesets in the Final Rule, or define additional terms if we rescind the Final Rule and instead implement the Policy and 50 CFR 424.19 because those authorities properly balance the goals of transparency and predictability of process with the benefit of preserving the Secretarial flexibility and discretion to exclude areas from designations of critical habitat for listed species. With respect to the comments seeking revision instead of rescission without providing specific recommendations on how to revise the Final Rule, we did not further address those commenters because there was not enough specificity to evaluate.

As explained earlier, we have considered whether to retain any portions of the regulation. However, the three reasons we identified for rescinding the Final Rule apply to all four of the key elements of the regulation: (1) the requirement to undertake an exclusion analysis whenever a proponent of an exclusion provides credible information; (2) the prescription for weighting the impacts; (3) the treatment of Federal lands; and (4) the requirement to exclude any area for which the benefits of exclusion outweigh the benefits of inclusion. Revising any of the standards in these elements, or even removing some combination of these elements and retaining the rest, would still result in constraining the Secretary's discretion and decreasing the agency's ability to further the conservation purposes of the Act, and would be unlikely to increase clarity or transparency. Additionally, the other elements of the Final Rule are already directly addressed even without the regulations—through the Policy and in some cases the requirements of the Act. Including these elements in a revised regulation in part or in whole would serve only to create additional confusion without changing or clarifying the Service's consideration of impacts under section 4(b)(2) of the Act.

We note also that this rescission is different from the rescissions addressed in the court decisions that commenters referenced. For example, unlike the rescission in *Regents,* this rescission will not ''eliminate the centerpiece of'' the critical habitat program or the consideration of exclusions from critical habitat designations. *See Regents,* 140 S. Ct. at 1913 (where DHS rescission had entirely eliminated both the forbearance and the benefits aspects of the DACA program but had only analyzed the benefits aspects). Rather, the Service would be required to continue to consider the impacts of critical habitat designations and would simply return to applying the 2016 Policy in considering exclusions from critical habitat. In addition, this rescission does not affect a right under the First Amendment. *See Fox Television, 129 S. Ct. at 1805–06* (requiring that, in regulation of speech, FCC put in place the ''least restrictive alternative'').

After thoughtful consideration of the specific revisions commenters have suggested, as well as of the possibility of rescinding only parts of the Final Rule or revising instead of rescinding the Final Rule in its entirety, we conclude that the conservation purposes of the Act are best served by promptly rescinding the Final Rule and resuming implementation of 50 CFR 424.19 and the Policy.

Regarding commenters' suggestions that NMFS adopt regulations corresponding to the regulations the Service adopted, we are not in a position to compel NMFS to adopt regulations similar to the ones we are rescinding with this final rule; nor would it further the policies of the Act for the Service to urge NMFS to adopt a framework at odds with the purposes, mandates, and structure of the Act.

Comment 21: A commenter contends that we have violated Executive Orders 12866 and 13563 because the public participation effort simply consisted of an abbreviated public comment period, no public hearings, and no focused stakeholder outreach.

Response: Section 6(a)(1) of E.O. 12866 states that in most cases rules should include a comment period of not less than 60-days. Due to the agreement for a long-term stay in litigation on this rulemaking, development and review of this final rule was completed on an expedited timeframe which included shortening the public comment period to a total of 45 days. In addition to holding a 45-day public comment period and responding to all of the comments received, the Service, pursuant to E.O. 12866, submitted the proposed rule and this final rule to the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) for review. Under E.O.

12866, OIRA and the issuing agency meet with any interested party to discuss issues related to a rule under review, and during the proposed and final rule reviews, we participated in several such meetings. In addition, we held three separate webinars for Tribes and Tribal organizations to provide an overview of, and information on how to provide input on, a series of rulemakings related to implementation of the Act that the Services were developing, including the proposed rule to rescind the Final Rule. We note that public hearings are not required for implementing regulations, and we declined to hold optional public hearings that were requested for this rulemaking.

Comment 22: A commenter stated that we should have conducted an analysis under the Regulatory Flexibility Act (RFA) because the vast majority of business concerns involved in the forestry industry in Alabama are small businesses that could be economically affected by critical habitat designations.

Response: We complied with the requirements of the RFA. No regulatory flexibility analysis is required if the head of an agency, or their designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act of 1996 amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. In the proposed and this final rule, we certify that the rescission of the Final Rule would not have a significant economic effect on a substantial number of small entities. The Service is the only entity directly affected by the rulemaking and by definition is not a small entity, and the rulemaking therefore will not have a significant effect on any small entities. In species-specific designations of critical habitat, we always evaluate whether a designation of critical habitat may directly affect small businesses. Therefore, the commenter's concern regarding potential impacts to forestry operations in Alabama would be evaluated in the regulatory flexibility analysis in any future species-specific critical habitat designation.

Comment 23: A commenter stated that an analysis under the Unfunded Mandates Reform Act (UMRA) should have been conducted because the facts presented in the *Weyerhaeuser* case when extrapolated across the United States would have certainly exceeded the $100 million threshold for that statute.

Response: The requirement to undertake an analysis under the UMRA applies only to regulations containing ''federal mandates'' that meet the threshold levels under the Act. 2 U.S.C. 1532–1535. The UMRA defines ''federal mandate'' as a regulation that would impose either ''an enforceable duty upon State, local, or tribal governments'' (federal intergovernmental mandate'') or ''an enforceable duty upon the private sector'' (''federal private sector mandate''). 2 U.S.C. 658(5)–(7). The rescission of the Final Rule does not impose an enforceable duty on State, local, or Tribal governments, or the private sector. The only direct impact of this final rule is upon the Service because this rulemaking action pertains to how the Service evaluates potential exclusions from critical habitat designations.

Comment 24: A commenter stated that our determinations with respect to Takings and E.O. 13132 warrant additional explanation given the facts in the *Weyerhaeuser* case, where the designation of critical habitat ''threatened to impose a $33 million cost'' based on one unit of critical habitat alone.

Response: The rescission of the Final Rule will not allow for any unlawful takings. The facts in the *Weyerhaeuser* case are not directly applicable because they related to a specific designation of critical habitat for a species, not an overarching regulation outlining the designation process. Furthermore, the rescission of the Final Rule does not directly affect private property, nor does it cause a physical or regulatory taking. It does not result in a physical taking because it does not effectively compel a property owner to suffer a physical invasion of property. Further, the rule does not result in a regulatory taking because it does not deny all economically beneficial or productive uses of the land or aquatic resources, it does substantially advance a legitimate government interest (conservation and recovery of endangered species and threatened species), and it does not present a barrier to all reasonable and expected beneficial uses of private property.

The requirement to avoid the destruction or adverse modification of critical habitat applies to actions on private land only when they involve Federal actions such as authorization or Federal funding. Where an action does implicate authorization or funding by a Federal agency, or the Federal agency directly carries out an activity on private lands, any resulting section 7 consultation under the Act on the designated critical habitat would then consider the effects of the particular proposed action (*e.g.,* issuance of a land-use-related permit) to ensure the critical habitat is not likely to be destroyed or adversely modified by the action. And even a finding that the action was likely to destroy or adversely modify the critical habitat would not result in an unlawful taking, because that finding would not require the Federal action agency or the landowner to restore the critical habitat or recover the species, but rather to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat. Rather than imposing an affirmative requirement that Federal actions improve critical habitat, section 7(a)(2) of the Act prohibits Federal actions from reducing the critical habitat's existing capacity to conserve the species. (Final Rule Establishing Definition of ''Destruction or Adverse Modification'' of Critical Habitat, 81 FR 7214, p. 7224, February 11, 2016; extending to the adverse-modification analysis the conclusion in *Nat'l Wildlife Fed'n* v. *National Marine Fisheries Service,* 524 F.3d 917, 930 (9th Cir. 2007), that agency action can only violate section 7(a)(2) of the Act ''if that agency action causes some deterioration in the species' pre-action condition''). In other words, the requirement for Federal agencies to ensure their actions are not likely to result in destruction or adverse modification of critical habitat is a prohibitory standard only; it does not mandate or prohibit any action by any private landowner.

Comment 25: A commenter stated that a better analysis or explanation is needed as to why the rulemaking does ''not directly affect . . . Tribal lands'' and only directly affects the Service.

Response: The rescission of the Final Rule does not directly affect any lands; the only direct effect is to guide the Service's analysis when it designates critical habitat. To the extent that Tribal or other lands may be affected by critical habitat designations, we would consider those cases in future species-specific designations that may affect those lands and where an action had a Federal nexus. Further, as explained above, even in the cases where an action has a Federal nexus, the Federal agency only has a duty to avoid destruction or adverse modification of the critical habitat.

Comment 26: A commenter disagrees with the Service's determination that the rule is procedural in nature and qualifies for a categorical exclusion under the National Environmental Policy Act (NEPA). They contend that

designation of critical habitat or exclusion from critical habitat has an impact on the human environment and that impact should not be dismissed.

Response: As discussed below, this rule sets out the overarching process and considerations that the Service undertakes when it designates critical habitat, and this rulemaking action has no significant impacts on the human environment.

Comment 27: A commenter noted that our determination for federalism and E.O. 13132 may achieve the opposite intent of those requirements, resulting in unclear legal standards and leading to an increase in litigation.

Response: For the reasons outlined in the proposed and in this final rule, we have determined that the Final Rule is problematic because it unduly constrained the Service's discretion in administering the Act, potentially limiting or undermining the Service's role as the expert agency and its ability to further the conservation of endangered and threatened species through designation of their critical habitats. We note that the legal standards will still be clear absent the Final Rule because the Policy and 50 CFR 424.19 will apply. We acknowledge that there may be differing views on the best way to achieve species conservation and implementation of the Act. When implementing the Act, we strive to strike a balance between establishing clear legal standards and retaining the discretion necessary for making the best possible decisions based on the specific facts at issue.

Comment 28: A commenter stated that the proposed rescission does not achieve the goals of the Civil Justice Reform Act to write regulations that minimize litigation and provide a clear legal standard.

Response: As we articulated in the proposed rule and this final rule, we find that the Final Rule's language in part is vague, thereby setting an unclear legal standard that was unlikely to minimize future litigation on individual critical habitat designations and any decision to exclude or not. As mentioned above, on January 14, 2021, which was 5 days before the Final Rule took effect, seven environmental groups challenged it, filing suit against the Service in Federal district court in Hawaii. Based on this legal challenge, we also find that the Final Rule did not ''minimize litigation.'' By rescinding the Final Rule, we will return to implementing the regulations at 50 CFR 424.19 and the Policy. Nothing in this action unduly burdens the judicial system, and the rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of E.O. 12988.

Comment 29: A commenter stated that our determination that the rescission of the Final Rule would not have effects under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, was conclusory in nature.

Response: In order for a regulation to be deemed significant under E.O. 13211, the regulation must be (1)(i) a significant regulatory action under E.O. 12866 or any successor order, and (ii) likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) one that is designated by OIRA as a significant energy action. While OIRA deemed this rule as significant under E.O. 12866, OIRA did not identify the proposed rule as having a significant adverse effect on the supply, distribution, or use of energy, nor did the Administrator of OIRA conclude this is a significant energy action. The rescission of an overarching regulation outlining the process and considerations of exclusions from critical habitat is not expected to have a significant adverse effect on the supply, distribution, or use of energy. Any effect on these issues that may result from future final designations of critical habitat has been, and will continue to be, documented and analyzed in those species-specific designations of critical habitat.

Required Determinations

Regulatory Planning and Review (E.O.s 12866 and 13563)

Executive Order 12866 (''E.O. 12866'') provides that OIRA will review all significant rules. OIRA has determined that this rule is significant. ''Effects of Rescinding the FWS Regulation Exclusions of Critical Habitat Under Section 4(b)(2) of the ESA RIN 1018–BD84 August 2021,'' which was prepared for the proposed rule (86 FR 59346), provides an assessment of potential costs and benefits of this regulatory action pursuant to E.O. 12866 and is available at *https://www.regulations.gov* in Docket No. FWS–HQ–ES–2019–0115. We decided not to make any changes to the effects analysis after consideration of the information provided through the public comment process. As noted in the effects analysis, there is uncertainty regarding the conservation needs of species, the specific locations where the species occur, the nature of areas proposed for designation, existing conservation efforts on the ground, and the land uses that are occurring or planned for the relevant areas. The Final Rule's economic analysis made assumptions based on Service staff experience and provided ranges of potential benefits for illustrative purposes only, not because we thought that any of the outcomes was more or less likely. Rescinding the Final Rule does not automatically result in an economic change, and the magnitude of the net economic impact from this final rule is uncertain.

Executive Order 13563 (''E.O. 13563'') reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives and further emphasizes that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this final rule in a manner consistent with these requirements. This final rule is consistent with E.O. 13563, and in particular with the requirement of retrospective analysis of existing rules designed ''to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.''

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency, or their designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

This rulemaking rescinds a rule that outlines Service procedures regarding exclusion of areas from designations of critical habitat under the Act. When

effective, the Service will resume the implementation of the 2013 Rule and the Policy jointly with NMFS. As discussed in our proposed rule, to the extent that the Final Rule differs from the Policy, it is limited to identifying specific factors for consideration that the Policy already enumerates for the Service to consider in weighing the benefits of excluding areas against the benefits of including them, but in a more general sense. Moreover, the Service is the only entity that would be directly affected by this final rule because the Service is the only entity that was implementing the final regulations under 50 CFR 17.90. No external entities, including any small businesses, small organizations, or small governments, will experience any economic impacts directly from this rule because the Service will continue to take into consideration the relevant impacts of designating specific areas as critical habitat and retain the ability to apply the factors identified in the Final Rule.

The regulatory protections that stem from designating critical habitat occur through section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies are directly regulated by designations of critical habitat. There is no requirement under the Regulatory Flexibility Act to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, even if this rule affects the scope or scale of future critical habitat designations, no small entities will be directly regulated by this rulemaking.

In addition, our decisions to exclude or not exclude areas (where a specific request has been made) based on this consideration of impacts will continue to be judicially reviewable in accordance with the Supreme Court's opinion in *Weyerhaeuser.* At the proposed rule stage, we certified that this rule would not have a significant economic effect on a substantial number of small entities and a regulatory flexibility analysis is not required. Nothing in this final rule changes that conclusion.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) On the basis of information contained in the *Regulatory Flexibility Act* section above, this final rule would not ''significantly or uniquely'' affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that this final rule would not impose a cost of $100 million or more in any given year on local or State governments or private entities. A small government agency plan is not required. As explained above, small governments would not be affected because this final rule would not place additional requirements on any city, county, or other local municipalities.

(b) This final rule would not produce a Federal mandate on State, local, or Tribal governments or the private sector of $100 million or greater in any year; that is, this final rule is not a ''significant regulatory action''' under the Unfunded Mandates Reform Act. This final rule would impose no obligations on State, local, or Tribal governments.

Takings (E.O. 12630)

In accordance with E.O. 12630, this final rule would not have significant takings implications. This final rule would not directly affect private property, nor would it cause a physical or regulatory taking. It would not result in a physical taking because it would not effectively compel a property owner to suffer a physical invasion of property. Further, this final rule would not result in a regulatory taking because it would not deny all economically beneficial or productive use of the land or aquatic resources and it would substantially advance a legitimate government interest (conservation and recovery of endangered species and threatened species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with E.O. 13132, we have considered whether this final rule would have significant federalism effects and have determined that a federalism summary impact statement is not required. This final rule pertains only to factors for designation of critical habitat under the Act and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (E.O. 12988)

This final rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of E.O. 12988. This final rule would rescind a rule that was solely focused on exclusions from critical habitat under the Act.

Government-to-Government Relationship With Tribes

In accordance with E.O. 13175, ''Consultation and Coordination with Indian Tribal Governments,'' and the Department of the Interior's manual at 512 DM 2, we considered possible effects of this final rule on federally recognized Indian Tribes. The Service has concluded that rescinding the Final Rule would not directly affect specific species or Tribal lands. With the rescission of the Final Rule, we will resume the implementation of the 2013 Rule and the Policy jointly with NMFS, which are almost identical to the treatment of Tribal lands under the Final Rule.

During July 2021, we held three separate webinars for Tribes and Tribal organizations to provide an overview of, and information on how to provide input on, a series of rulemakings related to implementation of the Act that the Services were developing, including the proposed rule to rescind the section 4(b)(2) exclusions regulations. We received written comments from Tribal organizations; however, we did not receive any requests for consultation regarding this action.

This regulatory rescission directly affects only the Service, and with or without this rescission the Service would be obligated to continue to designate critical habitat based on the best available data. Therefore, we conclude that this final rule to rescind the Final Rule does not have ''tribal implications'' under section 1(a) of E.O. 13175, and therefore formal government-to-government consultation is not required by E.O. 13175 and related policies of the Department of the Interior. We will continue to collaborate with Tribes on issues related to federally listed species and their habitats and work with them as we implement the provisions of the Act. See Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997).

Paperwork Reduction Act

This final rule does not contain any new collections of information that

require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (45 U.S.C. 3501 *et seq.*). 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.

National Environmental Policy Act

We analyzed this final rule in accordance with the criteria of the National Environmental Policy Act (NEPA), the Department of the Interior regulations on Implementation of the National Environmental Policy Act (43 CFR 46.10–46.450), and the Department of the Interior Manual (516 DM 8). We have determined that a detailed statement under NEPA is not required because the rule is covered by a categorical exclusion. The Department of the Interior has found that the following categories of actions would not individually or cumulatively have a significant effect on the human environment and are, therefore, categorically excluded from the requirement for completion of an environmental assessment or environmental impact statement: ''Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.'' 43 CFR 46.210(i)

The effect of this rulemaking is to rescind the Service-only procedures for considering exclusion of areas from a designation of critical habitat under the Act and return to implementing the regulations at 50 CFR 424.19 and the Policy that was issued jointly with NMFS. As a result, we conclude that the categorical exclusion found at 43 CFR 46.210(i) applies to this regulation. We also considered whether any ''extraordinary circumstances'' apply to this situation, such that the DOI categorical exclusion would not apply. See 43 CFR 46.215 (''Categorical Exclusions: Extraordinary Circumstances''). We determined that no extraordinary circumstances apply.

Therefore, having considered the extent to which this rule has a significant impact on the human environment, we have determined it falls within one of the categorical exclusions for actions that have no effect on the quality of the human environment. As a result, we find that the categorical exclusion found at 43 CFR 46.210(i) applies to this regulation rescission, and the Service has not identified any extraordinary circumstances that would preclude this categorical exclusion. We did not receive any public comments regarding our stated intention of invoking a categorical exclusion, with the exception of comments asserting that the initial use of a categorical exclusion when the Final Rule was codified (*i.e.,* the rule we are now rescinding) was incorrect. These comments do not conflict with or undermine our analysis here or compliance with applicable NEPA regulations for this rule.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The rescission of the Final Rule only effects the Service and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, and it has not been otherwise designated by the Administrator of OIRA as a significant energy action. Therefore, this action is a not a significant energy action, and no Statement of Energy Effects is required.

Authority

We issue this final rule under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

For the reasons discussed in the preamble, the U.S. Fish and Wildlife Service amends part 17 of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

Subpart I [Removed]

■ 2. Remove subpart I, consisting of § 17.90.

Subpart J [Redesignated as Subpart I]

■ 3. Redesignate subpart J, consisting of §§ 17.94 through 17.99, as subpart I.

Subpart K [Redesignated as Subpart J]

■ 4. Redesignate subpart K, consisting of §§ 17.100 through 17.199, as subpart J.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2022–15495 Filed 7–20–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220523–0119; RTID 0648–XC145]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring 30 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the Harpoon category. With this transfer, the adjusted Harpoon category quota for the 2022 fishing season is 78.7 mt. The 2022 Harpoon category fishery is open until November 15, 2022, or until the Harpoon category quota is reached, whichever comes first. This action is intended to provide further opportunities for Harpoon category fishermen, based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic Tunas Harpoon category (commercial) permitted vessels.

DATES: Effective July 19, 2022, through November 15, 2022.

FOR FURTHER INFORMATION CONTACT: Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503, Erianna Hammond, *erianna.hammond@noaa.gov,* 301–427–8503, and Nicholas Velseboer, *nicholas.velsboer@noaa.gov,* 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic highly migratory species (HMS) fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP)

and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

NMFS published a final rule implementing the 2021 ICCAT recommendation regarding western Atlantic BFT management which resulted in an increase to the baseline U.S. BFT quota (*i.e.,* from 1,247.86 mt to 1,316.14 mt) and sub-quotas for 2022 (87 FR 33049, June 1, 2022). The current baseline quotas for the Harpoon and Reserve categories are 48.7 mt and 31.2 mt, respectively. To date for 2022, NMFS has published two actions that have adjusted the Reserve category quota, including the allowable carryover of underharvest from 2021 to 2022 (86 FR 8717, February 9, 2022; 87 FR 33049, June 1, 2022). The current adjusted Reserve category quota is 306.7 mt. The 2022 Harpoon category fishery opened June 1, and is open through November 15, 2022, or until the Harpoon category quota is reached, whichever comes first.

Transfer of 30 mt From the Reserve Category to the Harpoon Category

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories after considering the determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer. These criteria include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by Harpoon category fishermen and provided by BFT dealers continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the Harpoon category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the Harpoon category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). To date, preliminary landings data indicate that the Harpoon category has landed 33.8 mt. Without a quota transfer at this time, NMFS would likely need to close the Harpoon category fishery and participants would have to stop BFT fishing activities with while commercial-sized BFT remain available in the areas where Harpoon category permitted vessels operate. Transferring 30 mt of BFT quota from the Reserve category would result in a total of 78.7 mt (48.7 mt + 30 mt = 78.7 mt) being available for the Harpoon category for the 2022 Harpoon category fishing season.

Regarding the projected ability of the vessels fishing under the Harpoon category to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered Harpoon category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. NMFS anticipates that the Harpoon category could harvest the transferred 30 mt prior to the end of the Harpoon category season, subject to weather conditions and BFT availability. NMFS may transfer unused Harpoon category quota to other quota categories, inseason, based on consideration of the determination criteria, as NMFS did for late 2021. Thus, this quota transfer would allow fishermen to take advantage of the availability of BFT on the fishing grounds and provide a reasonable opportunity to harvest the available U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2021 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS recently took such an action to carryover the allowable 127.3 mt of underharvest from 2021 to 2022 (87 FR 33049). NMFS will need to account for 2022 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT recommendations, (established in Recommendation 21–07), ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. This quota transfer is in line with the established management measures and stock status determinations. Another principal consideration is the objective of providing opportunities to harvest the available Harpoon category quota without exceeding the annual quota, based on the objectives of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest available BFT quota allocations (related to § 635.27(a)(8)(x)).

Given these considerations, NMFS is transferring 30 mt of the available 306.7 mt of Reserve category quota to the Harpoon category. Therefore, NMFS adjusts the Harpoon category quota to 78.7 mt for the 2022 Harpoon category fishing season (*i.e.,* through November 15, 2022, or until the Harpoon category quota is reached, whichever comes first), and adjusts the Reserve category quota to 276.7 mt (306.7 mt − 30 mt = 276.7 mt).

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, Harpoon category vessel owners are required to report their own catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov* or by using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer for the remainder of 2022 is also contrary to the public interest as such a delay would likely result in closure of the Harpoon fishery when the baseline quota is met and the need to re-open the fishery, with attendant administrative costs and costs to the fishery. The delay would preclude the fishery from harvesting BFT that are available on the fishing grounds and that might otherwise become unavailable during a delay. This action does not raise conservation and management concerns. Transferring quota from the Reserve category to the Harpoon category does not affect the overall U.S. BFT quota, and available data show the adjustment would have a minimal risk of exceeding the ICCAT-allocated quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria. For the same reasons discussed above, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: July 19, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–15754 Filed 7–19–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 139
Thursday, July 21, 2022

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 AGRICULTURE

Food and Nutrition Service

7 CFR Part 272

[FNS–2022–0005]

RIN 0584–AE86

Supplemental Nutrition Assistance Program: Revision of Civil Rights Data Collection Methods

Correction

In proposed rule document 2022–13058 appearing on pages 38010–38012 in the issue of Monday, June 27, 2022, make the following correction:

On page 38010, in the first column, the Subject in the heading is corrected to read as set forth above.

[FR Doc. C1–2022–13058 Filed 7–20–22; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0885; Project Identifier MCAI–2021–01429–T]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702); CL–600–2C11 (Regional Jet Series 550); CL–600–2D15 (Regional Jet Series 705); CL–600–2D24 (Regional Jet Series 900); and CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by reports that the landing gear age of certain airplanes was higher than expected for gear overhaul, which could increase the risk of corrosion. This proposed AD would require verifying the calendar age of the nose landing gear (NLG) and main landing gear (MLG) by way of component maintenance documents, and performing corrective actions if necessary. This proposed AD would also prohibit installing certain components. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 6, 2022.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email *thd.crj@mhirj.com;* internet *https://mhirj.com*. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0885; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Antariksh Shetty, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0885; Project Identifier MCAI–2021–01429–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Antariksh Shetty, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue,

Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2021–49, dated December 20, 2021 (TCCA AD CF–2021–49) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702); CL–600–2C11 (Regional Jet Series 550); CL–600–2D15 (Regional Jet Series 705); CL–600–2D24 (Regional Jet Series 900); and CL–600–2E25 (Regional Jet Series 1000) airplanes. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0885.

This proposed AD was prompted by reports that the landing gear age of certain airplanes was higher than expected for gear overhaul. The FAA is proposing this AD to address the possibility of undetected corrosion due to landing gear age that could lead to MLG and/or NLG collapse, and consequent damage to the airplane and injury to the occupants. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

MHI RJ has issued SB 670BA–32–062, dated December 2, 2021. This service information describes procedures for, among other actions, verifying the calendar age of the NLG and MLG by way of component maintenance documents and for removing affected landing gear components and replacing them with serviceable components.

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

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described except as discussed under ''Differences Between this Proposed AD and the MCAI.'' This proposed AD would also prohibit installing certain affected parts.

Differences Between This Proposed AD and the MCAI

TCCA AD CF–2021–49 requires the replacement of affected components with a calendar age of 10 years or more. However, this proposed AD also includes affected components with a calendar age of less than 10 years. MHI RJ Aviation ULC intends to revise Part 1 of the maintenance requirements manual (MRM) for the affected components to include a calendar age life limit in addition to the existing flight cycle life limit. TCCA then plans to issue an AD to enforce the calendar age life limit in the revised MRM, which would address the unsafe condition for components with a calendar age of less than 10 years for Canadian operators. However, for U.S. operators, affected components with a calendar age of less than 10 years may reach the new calendar age life limit before an FAA AD is issued to mandate the revised MRM once it is available. Therefore, components with a calendar age of less than 10 years are included in this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 624 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	$0	$340	$212,160

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 32 work-hours × $85 per hour = Up to $2,720	Up to $340,000 ...	Up to $342,720.

Authority for This Rulemaking

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

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

develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2022–0885; Project Identifier MCAI–2021–01429–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 6, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all MHI RJ Aviation ULC airplanes identified in paragraphs (c)(1) through (5) of this AD, certificated in any category.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701, & 702).

(2) Model CL–600–2C11 (Regional Jet Series 550).

(3) Model CL–600–2D15 (Regional Jet Series 705).

(4) Model CL–600–2D24 (Regional Jet Series 900).

(5) Model CL–600–2E25 (Regional Jet Series 1000) airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Unsafe Condition

This AD was prompted by reports that the landing gear age of certain airplanes was higher than expected for gear overhaul. The FAA is issuing this AD to address the possibility of undetected corrosion due to landing gear age that could lead to main landing gear (MLG) and/or nose landing gear (NLG) collapse, and consequent damage to the airplane and injury to the occupants.

(f) Compliance

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

(g) Determination of Component Calendar Age

Within 90 days after the effective date of this AD: Verify the airplane and/or the airplane technical records to determine whether any MLG and NLG components are affected components based on their calendar age, in accordance with Section 2, Part A, of the Accomplishment Instructions of MHI RJ Service Bulletin (SB) 670BA–32–062, Revision A, dated December 2, 2021.

(h) Removal and Replacement of Affected NLG Components

(1) Within the applicable compliance time indicated in figure 1 to paragraph (h) of this AD: Remove the affected NLG components identified in paragraph (g) of this AD in accordance with Section 2, Part B, of the Accomplishment Instructions of MHI RJ SB 670BA–32–062, Revision A, dated December 2, 2021.

(2) Before further flight after removal of the affected components, replace the removed components with serviceable components, in accordance with Section 2, Part D, of the Accomplishment Instructions of MHI RJ SB 670BA–32–062, Revision A, dated December 2, 2021.

Figure 1 to paragraph (h) – *Compliance time*

Component Calendar Age	Compliance Time
Less than 10 years	Prior to reaching 12 years' component calendar age or within 36 months after the effective date of this AD, whichever occurs later
10 years or more and less than 12 years	Within 36 months after the effective date of this AD or prior to reaching 14 years' component calendar age, whichever occurs first
12 years or more and less than 13 years	Prior to reaching 14 years' component calendar age
13 years or more and less than 14 years	Within 12 months after the effective date of this AD
14 years or more	Within 6 months after the effective date of this AD

(i) Removal and Replacement of Affected MLG Components

(1) Within the applicable compliance time indicated in figure 1 to paragraph (h) of this AD: Remove the affected MLG components identified in paragraph (g) of this AD in accordance with Section 2 Part E or H, as applicable, of the Accomplishment Instructions of MHI RJ SB 670BA–32–062, Revision A, dated December 2, 2021.

(2) Before further flight after removing the affected components, replace the removed components with serviceable components, in accordance with Section 2, Part G or J, as applicable, of the Accomplishment Instructions of MHI RJ SB 670BA–32–062, Revision A, dated December 2, 2021.

(k) Parts Installation Limitation

(1) As of the effective date of this AD, no person may install, on any airplane, any MLG or NLG component with a calendar age of 12 years or more unless it has been overhauled in accordance with Section 2 Part C, F, or I, as applicable, of the Accomplishment Instructions of MHI RJ SB 670BA–32–062, Revision A, dated December 2, 2021.

(2) As of the effective date of this AD, any MLG or NLG component with a calendar age of less than 12 years may be installed on any airplane, provided it is overhauled in accordance with Section 2 Part C, F, or I, as applicable, of the Accomplishment Instructions of MHI RJ SB 670BA–32–062, Revision A, dated December 2, 2021, prior to reaching 12 years' component calendar age.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or MHI RJ Aviation ULC's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2021–49, dated December 20, 2021, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0885.

(2) For more information about this AD, contact Antariksh Shetty, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email *thd.crj@mhirj.com*; internet *https://mhirj.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on July 15, 2022.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–15558 Filed 7–20–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0888; Project Identifier MCAI–2021–01211–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–10–10, which applies to all Airbus Helicopters Model SA330J helicopters. AD 2021–10–10 requires repetitively inspecting the main gearbox (MGB) particle detector and the MGB bottom housing (oil sump) for metal particles, analyzing any metal particles that are found, and replacing the MGB if necessary. Since the FAA issued AD 2021–10–10, additional review concluded that installing an improved planet gear assembly is necessary. This proposed AD would continue to require repetitively inspecting the MGB particle detector and the MGB bottom housing (oil sump) for metal particles, and analyzing any metal particles that are found, and would also require replacing the planet gear assembly and repetitively inspecting and establishing an airworthiness limitation for that assembly as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 6, 2022.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For EASA material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* internet: *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.* For Airbus Helicopters service information identified in this NPRM, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. The EASA material is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0888.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0888; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Mahmood G. Shah, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: 817–222–5538; email: *mahmood.g.shah@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0888; Project Identifier MCAI–2021–01211–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Mahmood G. Shah, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: 817–222–5538; email: *mahmood.g.shah@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–10–10, Amendment 39–21543 (86 FR 27271, May 20, 2021) (AD 2021–10–10), for all Airbus Helicopters Model SA330J helicopters. AD 2021–10–10 requires repetitively inspecting the MGB particle detector and the MGB bottom housing (oil sump) for metal particles, analyzing any metal particles that are found, and replacement of the MGB if necessary. The FAA issued AD 2021–10–10 to address the unsafe condition on these products. AD 2021–10–10 was prompted by EASA AD 2018–0272, dated December 13, 2018 (EASA AD 2018–0272) to correct an unsafe condition for all Airbus Helicopters Model SA330J helicopters.

Actions Since AD 2021–10–10 Was Issued

Since the FAA issued AD 2021–10–10, EASA, which is the Technical Agent for the Member States of the European Union, has issued superseding EASA AD 2021–0239, dated November 5, 2021 (EASA AD 2021–0239), to correct an unsafe condition for all Airbus Helicopters Model SA330J helicopters.

This proposed AD was prompted by additional review accomplished by Airbus Helicopters that concluded that replacing the second stage planet gear assembly with a new and improved second stage planet gear assembly part number (P/N) 330A32–9861–02 (modification (mod) 0751091) is necessary in order to further improve the level of safety of the fleet. The FAA is proposing this AD to address failure of an MGB second stage planet gear, which could result in failure of the MGB and subsequent loss of control of the helicopter. See EASA AD 2021–0239 for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0239 supersedes EASA AD 2018–0272 and continues to require repetitively inspecting the MGB particle detector and the MGB bottom housing (oil sump) for metal particles, and analyzing any metal particles that are found. EASA AD 2021–0239 also requires installing an MGB equipped with a new second-stage planet gear assembly P/N 330A32–9861–02 (mod 0751091) or modifying an affected MGB by having the second stage planet gear assembly replaced by an Airbus Helicopter qualified technician; and extends the compliance time for the repetitive MGB bottom housing (oil sump) inspections and establishes a life limit for post-mod 0751091 helicopters.

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.

Other Related Service Information

The FAA reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. SA330–05.103, Revision 3, dated October 4, 2021. This service information specifies procedures for checking (inspecting) the MGB particle detector and the bottom housing (oil sump) to ensure that there are no particles, and for particle analysis.

The FAA also reviewed Airbus Helicopters ASB No. SA330–65.139, Revision 0, dated October 4, 2021 (ASB SA330–65.139). This service information specifies procedures for installing an MGB equipped with a new second-stage planet gear assembly P/N 330A32–9861–02 (mod 0751091) and the alternate action of having the second stage planet gear assembly replaced by an Airbus Helicopters qualified technician. The new second stage planet gear assembly has improved stress and fatigue characteristics. ASB SA330–65.139 also establishes an airworthiness limitation of 2,750 flight hours for all post mod 0751091 planet gear assemblies.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of the same type design.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2021–10–10, this proposed AD would retain all of the requirements of AD 2021–10–10. Those requirements are referenced in EASA AD 2021–0239, which, in turn, is referenced in paragraph (g) of this proposed AD.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0239, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences

Between this Proposed AD and the EASA AD.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2021–0239 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0239 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0239 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0239. Service information referenced in EASA AD 2021–0239 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0888 after the FAA final rule is published.

Differences Between This Proposed AD and the EASA AD

EASA AD 2021–0239 requires certain actions be done after the last flight of the day or ''ALF,'' whereas this proposed AD would require doing those actions before the first flight of the day. EASA AD 2021–0239 requires contacting the manufacturer if unsure about the characterization of the particles collected, whereas this proposed AD would not. If there are any 16NCD13 particles, EASA AD 2021–0239 requires contacting the manufacturer and sending a 1-liter sample of oil to the manufacturer, whereas this proposed AD would not. EASA AD 2021–0239 requires returning certain parts to the manufacturer, whereas this proposed AD would not. EASA AD 2021–0239 allows the option of modifying an affected MGB by having the second stage planet gear assembly replaced by an Airbus Helicopters qualified technician, whereas this proposed AD would allow that modification with certain approvals instead. EASA AD 2021–0239 allows different methods to accomplish the oil sump inspection, whereas this proposed AD would require a certain method. EASA AD 2021–0239 requires discarding certain parts, whereas this proposed AD would require removing those parts from service instead.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 15 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Inspecting the MGB particle detector would take about 0.25 work-hour for an estimated cost of $21 per helicopter and $315 for the U.S. fleet, per inspection cycle. Inspecting the MGB bottom housing (oil sump) would take up to about 4 work-hours for an estimated cost of $340 per helicopter and $5,100 for the U.S. fleet, per inspection cycle.

Replacing a second stage planet gear assembly would take about 100 work-hours and parts would cost about $121,140 for an estimated cost of $129,640 per helicopter and $1,944,600 for the U.S. fleet, per replacement cycle. Alternatively, replacing an MGB would take about 100 work-hours and parts would cost about $600,000 (overhauled) for an estimated cost of $608,500 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2021–10–10, Amendment 39–21543 (86 FR 27271, May 20, 2021); and

■ b. Adding the following new airworthiness directive:

Airbus Helicopters: Docket No. FAA–2022–0888; Project Identifier MCAI–2021–01211–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 6, 2022.

(b) Affected ADs

This AD replaces AD 2021–10–10, Amendment 39–21543 (86 FR 27271, May 20, 2021).

(c) Applicability

This AD applies to all Airbus Helicopters Model SA330J helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6320, Main Rotor Gearbox.

(e) Unsafe Condition

This AD was prompted by a failure of a second stage planet gear installed in the main gearbox (MGB). The FAA is issuing this AD to address failure of an MGB second stage planet gear, which could result in failure of the MGB and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0239, dated November 5, 2021 (EASA AD 2021–0239).

(h) Exceptions to EASA AD 2021–0239

(1) Where EASA AD 2021–0239 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2021–0239 refers to March 30, 2018 (the effective date of EASA AD 2018–0065, dated March 23, 2018), this AD requires using the effective date of this AD.

(3) Where EASA AD 2021–0239 refers to December 27, 2018 (the effective date of EASA AD 2018–0272, dated December 13, 2018), this AD requires using the effective date of this AD.

(4) Where EASA AD 2021–0239 refers to flight hours (FH), this AD requires using hours time-in-service (TIS).

(5) Where EASA AD 2021–0239 specifies actions be done after the last flight of the day or ''ALF,'' this AD requires doing those actions before the first flight of the day.

(6) Where paragraph (1) of EASA AD 2021–0239 specifies to inspect the MGB particle detector ''in accordance with the instructions of Section 3 of the inspection ASB'' for this AD replace that phrase with ''by following the Accomplishment Instructions, paragraph 3.B.2.a., of the inspection ASB.''

(7) Where paragraph (2) of EASA AD 2021–0239 specifies to inspect the MGB bottom housing (oil sump) ''in accordance with the instructions of Section 3 of the inspection ASB'' for this AD replace that phrase with ''by following the Accomplishment Instructions, paragraph 3.B.2.b. of the inspection ASB.''

(8) Where the service information referenced in EASA AD 2021–0239 specifies to perform a metallurgical analysis and contact the manufacturer if unsure about the characterization of the particles collected, this AD does not require contacting the manufacturer to determine the characterization of the particles collected.

(9) Although the service information referenced in EASA AD 2021–0239 specifies that if any 16NCD13 particles are found to contact the manufacturer and send a 1-liter sample of oil to the manufacturer, this AD does not require that action.

(10) Although the service information referenced in EASA AD 2021–0239 specifies returning certain parts to the manufacturer, this AD does not require that action.

(11) Where paragraph (5) of EASA AD 2021–0239 allows modifying an affected MGB by having the second stage planet gear assembly replaced by an Airbus Helicopters qualified technician, this AD does not allow that action; instead of that action, this AD allows modifying an affected MGB in accordance with a method approved by the Manager, General Aviation & Rotorcraft Section, International Validation Branch, FAA; or EASA; or Airbus Helicopters EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(12) Although the service information referenced in EASA AD 2021–0239 specifies discarding certain parts, this AD requires removing the parts from service.

(13) The ''Remarks'' section of EASA AD 2021–0239 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0239 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the helicopter can be modified, provided that the helicopter is operated during the day, under visual flight rules, and with no passengers onboard.

(k) Alternative Methods of Compliance (AMOCs)

(1) 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 local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Related Information

(1) For EASA AD 2021–0239, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy. Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0888.

(2) For more information about this AD, contact Mahmood G. Shah, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Pkwy. Fort Worth, TX 76177; phone: 817–222–5538; email: *mahmood.g.shah@faa.gov.*

Issued on July 17, 2022.

Christina Underwood,

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

[FR Doc. 2022–15578 Filed 7–20–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0882; Project Identifier MCAI–2021–01370–T]

RIN 2120–AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. This proposed AD was prompted by a report that corrosion and wear were discovered on the slat tracks due to insufficient grease applied to the slat tracks during production. This proposed AD would require repetitive cleaning and greasing of all slat tracks to prevent damage and corrosion; doing repetitive inspections of the slat tracks for any damage or corrosion, and the correct application of grease; and applicable corrective actions; as specified in a Transport Canada Civil Aviation (TCCA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 6, 2022.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

For material that will be incorporated by reference (IBR) in this AD, contact TCCA, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *AD-CN@tc.gc.ca;* internet *https://tc.canada.ca/en/aviation.* 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 *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0882.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0882; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0882; Project Identifier MCAI–2021–01370–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The TCCA, which is the aviation authority for Canada, has issued TCCA AD CF–2021–43, dated November 29, 2021 (TCCA AD CF–2021–43) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes.

This proposed AD was prompted by a report that corrosion and wear were discovered on the slat tracks on a number of in-service airplanes due to insufficient grease applied to the slat tracks during production. The FAA is proposing this AD to address corrosion and wear on the slat tracks, which could lead to loss of one or more slat panels or loss of slat track guidance and consequently cause catastrophic structural damage to the wings or other parts of the airplane due to slat panels departing from the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

TCCA AD CF–2021–43 specifies procedures for repetitive cleaning and greasing of all slat tracks, including the slat track rollers, the slat pinion gear bearings, and the slat pinion gears to prevent damage (*e.g.,* metal wear) and corrosion; doing repetitive general visual inspections of the slat tracks for any damage or corrosion, and the correct application of grease; and applicable corrective actions. Corrective actions include repairs, rework, measurements of the reworked area, and a magnetic particle inspection of the reworked area for any cracking. TCCA AD CF–2021–43 also specifies procedures for reporting the inspection findings.

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**.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in TCCA AD CF–2021–43 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD. This proposed AD would also require a reporting requirement.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate TCCA AD CF–2021–43 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with TCCA AD CF–2021–43 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information required by TCCA AD CF–2021–43 for compliance will be available at *https://www.regulations.gov*

by searching for and locating Docket No. FAA–2022–0882 after the FAA final rule is published.

Interim Action

The FAA considers this proposed AD interim action. If final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this proposed AD would affect 61 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 15 work-hours × $85 per hour = $1,275	$0	Up to $1,275	Up to $77,775.

* Table does not include estimated costs for reporting.

The FAA estimates that it would take about 1 work-hour per product to comply with the proposed reporting requirement in this proposed AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $5,185, or $85 per product.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
8 work-hours × $85 per hour = $680	$0	$680

The FAA has received no definitive data on which to base the cost estimates for the repair specified in this proposed AD.

Paperwork Reduction Act

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 current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Docket No. FAA–2022–0882; Project Identifier MCAI–2021–01370–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 6, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada Civil Aviation (TCCA) AD CF–2021–43, dated November 29, 2021 (TCCA AD CF–2021–43).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that corrosion and wear were discovered on the slat tracks due to insufficient grease applied to the slat tracks during production. The FAA is issuing this AD to address corrosion and wear on the slat tracks, which could lead to loss of one or more slat panels or loss of slat track guidance and consequently cause catastrophic structural damage to the wings or other parts of the airplane due to slat panels departing from the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, TCCA AD CF–2021–43.

(h) Exceptions to TCCA AD CF–2021–43

(1) Where TCCA AD CF–2021–43 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where TCCA AD CF–2021–43 refers to hours air time, this AD requires using flight hours.

(3) Where the vendor service information referenced in TCCA AD CF–2021–43 specifies to do a magnetic particle inspection or an eddy current inspection of the repaired area for any cracking, for this AD if any cracking is found, the cracking must be repaired before further flight using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or Airbus Canada Limited Partnership's TCCA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(4) The ''applicable SB'' as defined in TCCA AD CF–2021–43 is not required by this AD.

(5) Paragraph C. of TCCA AD CF–2021–43 specifies to report inspection results to Airbus Canada Limited Partnership within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(5)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. 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, New York ACO Branch, FAA; or TCCA; or Airbus Canada Limited Partnership's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) For TCCA AD CF–2021–43, contact TCCA, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *AD-CN@tc.gc.ca;* internet *https://tc.canada.ca/en/aviation.* 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. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0882.

(2) For more information about this AD, contact Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

Issued on July 15, 2022.

Christina Underwood,

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

[FR Doc. 2022–15555 Filed 7–20–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0887; Project Identifier MCAI–2022–00051–T]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP (Type Certificate Previously Held by Israel Aircraft Industries, Ltd.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Gulfstream Aerospace LP Model Gulfstream G150 airplanes. This proposed AD was prompted by reports that wing flap fairing debonding and corrosion were discovered at certain areas of the lower skin on both wings. This proposed AD requires an inspection for corrosion in certain areas of the wing skin fairings, additional inspections if necessary, resealing the fairings with new fillet seal, and applicable corrective actions, as specified in the Civil Aviation Authority of Israel (CAAI) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 6, 2022.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* internet *https://www.gulfstream.com/customer-support.* You may view this service information at the FAA, Airworthiness Products

Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0887; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0887; Project Identifier MCAI–2022–00051–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The CAAI, which is the aviation authority for Israel, has issued AD ISR I–57–2021–12–3, dated January 1, 2022 (CAAI AD ISR I–57–2021–12–3) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Gulfstream Aerospace LP Model Gulfstream G150 airplanes.

This proposed AD was prompted by reports that wing flap fairing debonding and corrosion were discovered at the lower skin of rib 3 and rib 11 on both wings. The FAA is proposing this AD to address flap fairing debonding and moisture intrusion that might lead to lower wing skin corrosion and cracking on both wings, and reduced structural integrity of the wings. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

CAAI AD ISR I–57–2021–12–3, dated January 1, 2022, describes procedures for an inspection for corrosion in the area of the wing skin (or doubler if installed) under the rib 3 and rib 11 fairings, a penetration or eddy current inspection for cracks if corrosion was found, a measurement of the thickness of remaining wing skin (or doubler) if no cracks were found, resealing of rib 3 and rib 11 fairings with new fillet seal, and applicable corrective actions. Corrective actions include cleaning and removing corrosion, crack repair, and repair of fairing installation locations with a certain thickness reduction. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD requires accomplishing the actions specified in CAAI AD ISR I–57–2021–12–3 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 87 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
29 work-hours × $85 per hour = $2,465	Minimal	$2,465	$214,455

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS *

Labor cost	Parts cost	Cost per product
Up to 10 work-hours × $85 per hour = $850	$0	Up to $850.

* The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Gulfstream Aerospace LP (Type Certificate Previously Held by Israel Aircraft Industries, Ltd.): Docket No. FAA–2022–0887; Project Identifier MCAI–2022–00051–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 6, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Gulfstream Aerospace LP Model Gulfstream G150 airplanes, certificated in any category, as identified in The Civil Aviation Authority of Israel (CAAI) AD ISR I–57–2021–12–3, dated January 1, 2022 (CAAI AD ISR I–57–2021–12–3).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports that wing flap fairing debonding and corrosion were discovered at lower skin of rib 3 and rib 11 on both wings. The FAA is issuing this AD to address flap fairing debonding and moisture intrusion that might lead to lower wing skin corrosion and cracking on both wings, and reduced structural integrity of the wings.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, CAAI AD ISR I–57–2021–12–3.

(h) Exceptions to Service Information Specifications

(1) Where CAAI AD ISR I–57–2021–12–3 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where the Compliance paragraph of CAAI AD ISR I–57–2021–12–3 requires compliance at a certain time, replace the text ''at the next suitable planned maintenance inspection within the next 24 months from the effective date of this AD'' with ''within 24 months after the effective date of this AD.''

(3) Where the Action paragraph of CAAI AD ISR I–57–2021–12–3 refers to certain service information, replace the text ''Gulfstream Service Bulletin No.150–57–197, dated January 01, 2022, or later approved revision,'' with ''Gulfstream Service Bulletin No. 150–57–197, Revision 1, dated June 16, 2022, or later approved revision.''

(4) Where the service information specified in CAAI AD ISR I–57–2021–12–3 specifies to report to Gulfstream if ''cracks were discovered'' and ''for any fairing installation location with one or more grid squares with thickness reduction of greater than 10%,'' for this AD, cracks and fairing installation locations with one or more grid squares with thickness reduction of greater than 10% must be repaired before further flight using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or CAAI; or CAAI's authorized Designee. If approved by the authorized Designee, the approval must include the Designee's authorized signature.

(i) No Reporting Requirement

Although the service information referenced in CAAI AD ISR I–57–2021–12–3 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, 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 Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) 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, Large Aircraft Section,

International Validation Branch, FAA; or the Civil Aviation Authority of Israel (CAAI); or the CAAI's authorized Designee. If approved by the CAAI Designee, the approval must include the Designee's authorized signature.

(k) Related Information

(1) For CAAI AD ISR I–57–2021–12–3, dated January 01, 2022, contact Civil Aviation Authority of Israel (CAAI), P.O. Box 1101, Golan Street, Airport City, 70100, Israel; telephone 972–3–9774665; fax 972–3–9774592; email *aip@mot.gov.il.* You may find this CAAI AD on the CAAI website at *https://www.caa.gov.il.* 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. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0887.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

Issued on July 15, 2022.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–15554 Filed 7–20–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0886; Project Identifier MCAI–2022–00261–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–2A12 airplanes. This proposed AD was prompted by reports of insufficient clearance between the surrounding structure/skin of the aircraft and select bleed air ducts that supply the wing ice protection system (WIPS) in the rear fuselage. This proposed AD would require inspecting the bleed air duct and surrounding structure for minimum clearance and damage, and applicable corrective actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 6, 2022.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com*; internet *https://www.bombardier.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0886; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0886; Project Identifier MCAI–2022–00261–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2022–05, dated February 24, 2022 (TCCA AD CF–2022–05) (also referred to after this as the MCAI), to correct an unsafe condition for certain Bombardier, Inc., Model BD–700–2A12 airplanes. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0886.

This proposed AD was prompted by reports of insufficient clearance between the surrounding structure/skin of the aircraft and select bleed air ducts that supply the WIPS in the rear fuselage.

The FAA is proposing this AD to address possible interference between the high pressure (HP) shroud and the surrounding structures, which could compromise the HP ducting shroud's capability to provide bleed air leak routing and result in a bleed air leak being undetected. A significant undetected bleed air leak could expose the surrounding structure to heat stress, resulting in reduced structural integrity of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 700–36–7502, dated October 28, 2020. This service information describes procedures for inspecting the bleed air duct and surrounding structure for minimum clearance and damage, and corrective actions, Corrective actions include adjusting the ductwork if clearance is below the minimum required, and repairing any damage.

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

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 8 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hours × $85 per hour = $85	$1	$86	$688

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 22 work-hours × $85 per hour = $1,870	$0	$1,870

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2022–0886; Project Identifier MCAI–2022–00261–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 6, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–2A12 airplanes, certificated in any category, serial numbers 70006, 70007, 70009 through 70019 inclusive, 70021 through 70029 inclusive, and 70031.

(d) Subject

Air Transport Association (ATA) of America Code 36, Pneumatic.

(e) Unsafe Condition

This AD was prompted by reports of insufficient clearance between the surrounding structure/skin of the aircraft and select bleed air ducts that supply the wing ice protection system (WIPS) in the rear fuselage. The FAA is issuing this AD to address possible interference between the high pressure (HP) shroud and the surrounding structures, which could compromise the HP ducting shroud's capability to provide bleed air leak routing and result in a bleed air leak being undetected. A significant undetected bleed air leak could expose the surrounding structure to heat stress, resulting in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Within 21 months after the effective date of this AD: Inspect the affected bleed air ducts and surrounding structure for minimum clearance and damage (wear or chafing), and do all applicable corrective actions in accordance with the Accomplishment Instructions of Bombardier Service Bulletin (SB) 700–36–7502, October 28, 2020. Do all applicable corrective actions before further flight.

(h) No Reporting Requirement

Although Bombardier Service Bulletin (SB) 700–36–7502, October 28, 2020, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2022–05, dated February 24, 2022, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0886.

(2) For more information about this AD, contact Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov*.

(3) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com*; internet *https://www.bombardier.com*. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on July 15, 2022.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–15559 Filed 7–20–22; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[EPA–R10–OAR–2022–0374; FRL–9881–01–R10]

National Emissions Standards for Hazardous Air Pollutants; Delegation of Authority to Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to fully approve a delegation request submitted by the Washington State Department of Health (WDOH) for full delegation of authority to implement and enforce the National Emission Standards for Hazardous Air Pollutants for radionuclide air emissions. The EPA granted WDOH partial delegation of authority to implement and enforce these standards effective July 5, 2006. The WDOH has addressed the partial approval issues, has updated its adoption of the applicable Federal standards to address all current Federal requirements, and has submitted to the EPA a request for full delegation of these standards.

DATES: Comments must be received on or before August 22, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2022–0374, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *https://www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jim McAuley, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553–1987 or *mcauley.jim@epa.gov.*

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I. Background

Section 112(l) of the Clean Air Act (CAA) and the Code of Federal Regulations (CFR) at 40 CFR part 63, subpart E, authorize the EPA to delegate to State and local agencies authority to implement and enforce the National Emission Standards for Hazardous Air Pollutants (NESHAPs) if specified requirements are met. The NESHAPs are codified in 40 CFR parts 61 and 63. One option for such delegation is ''straight delegation,'' under which a State or local agency requests delegation based on Federal rules adopted unchanged into State or local rules. Criteria for

straight delegations are set forth in 40 CFR 63.91(d). There are two basic requirements for straight delegation. First, the requesting agency must show it has adequate authority and resources to implement and enforce the specified NESHAP. This criterion must be met for straight delegation as well as for all other types of delegation under CAA section 112(l). Second, for straight delegation, the requesting agency must show that it has adopted the Federal NESHAPs for which it is requesting delegation unchanged into State or local law.

Effective July 5, 2006, the EPA granted WDOH partial approval and delegation to implement and enforce the radionuclides NESHAPs in the State of Washington, specifically, 40 CFR part 61, subparts A, B, H, I, K, Q, R, T, and W (Radionuclides NESHAPs) as in effect on July 1, 2004 (71 FR 32276, June 5, 2006). The EPA granted WDOH partial rather than full approval and delegation of the Radionuclides NESHAPs because WDOH did not at that time have express authority to recover criminal fines for certain actions, as required by 40 CFR 70.11(a)(3)(iii) and 40 CFR 63.91(d)(3)(i)(A). The EPA also approved a streamlined mechanism by which WDOH could receive partial approval and delegation of newly promulgated or revised Radionuclides NESHAPs as provided in 40 CFR 63.91(a)(1) and (d)(2).

II. WDOH's Delegation Request

The WDOH submitted a request for full approval and delegation of the Radionuclides NESHAPs on February 3, 2012. The WDOH also submitted additional updates to its request in letters dated April 10, 2017, August 11, 2017, September 18, 2016 and February 25, 2022. In its request, WDOH explained that it has since adopted regulations that, together with its existing criminal enforcement authority, address the basis for the EPA granting partial rather than full approval and delegation in 2006. Specifically, WDOH adopted regulations prohibiting the making of a false material statement, representation, or certification in any required submission. See Washington Administrative Code (WAC) 246–247–080(12). The WDOH also adopted regulations prohibiting any person from rendering inaccurate any required monitoring device or method. See WAC 246–247–075(14). The WDOH's submission included a letter from the Washington Attorney General's office confirming that WDOH now has criminal authorities meeting the requirements of 40 CFR 70.11.

In addition, WDOH's submittal showed that it has updated its adoption by reference of the Radionuclides NESHAPs, without change, to include the Federal rules in effect as of July 1, 2021. See WAC 246–247–035. The WDOH also committed to undertaking updates to its adoption by reference of the Radionuclides NESHAPs as needed to ensure they remain consistent with the Federal regulations.

The WDOH's submission also included an updated agreement with the Washington Department of Ecology under which WDOH is required to make entries into EPA's Integrated Compliance Information System for Air (ICIS-Air).

III. EPA Action

A. What authorities are included?

Based on WDOH's request for full approval and delegation, the EPA has determined that WDOH has addressed the partial approval issue discussed in the EPA's 2006 partial approval and delegation of the Radionuclides NESHAPs, and that WDOH continues to meet the other requirements for straight delegation of the Radionuclides NESHAPs. First, together with the authority to pursue criminal penalties for knowing violations provided by the Revised Code of Washington (RCW) 70A.15.3130 and 70A.15.3150,[1] WDOH now has all the criminal authorities required by 40 CFR 70.11(a)(3)(iii) and 63.91(d)(3)(i).[2] Second, WDOH has updated its regulations, specifically, its incorporation by reference of the Radionuclides NESHAPs as of July 1, 2021, so that it can fully implement and enforce the Radionuclides NESHAPs as currently in effect. See WAC 246–247–035. Finally, WDOH has confirmed that it continues to meet all other criteria of 40 CFR 63.91 that provided the basis for its 2006 partial delegation. See 40 CFR 63.91(a)(1) and (d)(2).

Therefore, except as provided in Section III.B. of this preamble, the EPA is granting full approval and delegation to WDOH of authority to implement and enforce the Radionuclides NESHAPs as in effect on July 1, 2021. Radionuclides NESHAPs that are promulgated or revised substantively after that date are not delegated to WDOH. These remain the responsibility of the EPA.

Included in this full approval and delegation is the authority to approve:

1. ''Minor changes to monitoring'' [3] including the use of the specified monitoring requirements and procedures with minor changes in methodology as described in 40 CFR 61.14(g)(1)(i);

2. ''Intermediate changes to monitoring;''

3. ''Minor changes to recordkeeping/reporting;''

4. ''Minor changes in test methods,'' including the use of a reference method with minor changes in methodology as described in 40 CFR 61.13(h)(1)(i); and

5. Waiver of the requirement for emission testing because the owner or operator of a source has demonstrated by other means to WDOH's satisfaction that the source is in compliance with the standard as described in 40 CFR 61.13(h)(1)(iii).

Any authorities not addressed in this letter and not identified in any delegated subpart of the Radionuclides NESHAPs as authorities that cannot be delegated shall be considered delegated. See 67 FR 3106, January 23, 2002, p. 3109, footnote 3.

In previously granting partial approval and delegation, we noted that WDOH does, as a matter of State law, have additional regulations and requirements that sources of radionuclide air emissions must meet. As discussed in more detail below, those additional authorities and requirements are not part of this full approval and delegation.

B. What authorities are excluded?

The EPA is not delegating authorities under 40 CFR part 61 that specifically indicate they cannot be delegated, that require rulemaking to implement, that affect the stringency of the standard, equivalency determinations, or where national oversight is the only way to ensure national consistency. The following Table 1 identifies specific authorities within 40 CFR part 61, subparts A, B, H, I, K, Q, R, T, and W, that the EPA is excluding from this delegation.

[1] Previously codified at RCW 70.94.422 and 70.94.430.

[2] The EPA has previously determined that virtually identical provisions meet the requirements of 40 CFR 70.11(a)(3)(iii) with respect to the Washington Department of Ecology. See 66 FR 16, pp. 17–18 (January 2, 2001).

[3] For purposes of this paragraph, the terms in quotations have the meaning assigned to them in 40 CFR 63.90.

TABLE 1—PART 61 AUTHORITIES EXCLUDED FROM APPROVAL AND DELEGATION

Section	Authorities
61.04(b)	Waiver of recordkeeping.
61.04(c)	Delegations to state and local agencies.
61.05(c)	Waivers/exemptions.
61.11	Waiver of compliance.
61.12(d)	Approval of alternative means of emission limitation.
61.13(h)(1)(ii)	Approval of alternatives to test methods (except as provided in 40 CFR 61.13(h)(1)(i)).
61.14(d)	Combined effluents.
61.14(g)(1)(ii)	Approval of alternatives to monitoring that do not qualify as ''Minor changes to monitoring,'' ''Intermediate changes to monitoring,'' or ''Minor changes to recordkeeping/reporting.[4]
61.16	Availability of information.
61.23(b)	Subpart B—Radon Emissions from Underground Uranium Mines Alternative; compliance demonstration to COMPLY–R.
61.93(b)(2)(iii), (c)(2)(iii)	Subpart H—Emissions of Radionuclides Other than Radon from DOE Facilities.
61.107(b)(2)(iii), (d)(2)(iii)	Subpart I—Radionuclide Emissions from Federal Facilities Other than NRC Licensees and Not Covered by Subpart H.
61.125(a)	Subpart K—Radionuclide Emissions from Elemental Phosphorus Plants.
61.206(c), (d), and (e)	Subpart R—Radon Emission from Phosphogypsum Stacks.

IV. Implications

As with the previous partial delegation and approval and consistent with other delegations to the State of Washington, under this full delegation and approval:

1. Sources in Washington subject to the delegated Radionuclides NESHAPs should continue to direct questions and compliance issues to WDOH except with respect to those authorities that are not delegated (those noted in Section III.B. of this preamble). For those authorities noted in Section III.B of this preamble, affected sources should continue to work with the EPA as their primary contact and submit materials directly to the EPA, copying WDOH on all submittals, questions, and requests.

2. Sources subject to the Radionuclides NESHAPs continue to be required to send required notifications, reports and requests to WDOH for WDOH's action and to provide copies to the EPA. For authorities that are excluded from this delegation (see Section III.B of this preamble), sources should continue to send required notifications, reports, and requests to the EPA and to provide copies to WDOH.

3. Any records or reports provided to or otherwise obtained by WDOH relating to the Radionuclides NESHAPs should be made available to the EPA upon request. In accordance with 40 CFR 61.16 and 63.15, the availability to the public of information provided to or otherwise obtained by the EPA in connection with this delegation shall be governed by 40 CFR part 2. The EPA may request notifications and reports from owners/operators and/or WDOH.

4. The WDOH must continue to maintain a record of all approved alternatives to all monitoring, testing, recordkeeping, and reporting requirements and provide this list of alternatives to the EPA at least semi-annually, or at a more frequent basis if requested by the EPA. The EPA may audit the WDOH-approved alternatives and disapprove any that it determines are inappropriate, after discussion with WDOH. If changes are disapproved, WDOH must notify the source that it must revert to the original applicable monitoring, testing, recordkeeping, and/or reporting requirements. Also, in cases where the source does not maintain the conditions which prompted the approval of the alternatives to the monitoring testing, recordkeeping, and/or reporting requirements, WDOH must require the source to revert to the original monitoring, testing, recordkeeping, and reporting requirements, or more stringent requirements, if justified.

5. The WDOH shall require affected facilities to use the methods specified in 40 CFR part 61 in performing source tests pursuant to the regulations. See 40 CFR 61.7.

6. Enforcement of these delegated Radionuclides NESHAPs in WDOH's jurisdiction will be the primary responsibility of WDOH. Nevertheless, the EPA may exercise its concurrent enforcement authority pursuant to sections 112(l)(7) and 113 of the CAA and 40 CFR 63.90(d)(2) with respect to sources which are subject to the Radionuclides NESHAPs.

7. Implementation and enforcement of the delegated NESHAP are subject to the *Environmental Performance Partnership Agreement* between the State of Washington and the EPA and its successor documents. The Agreement defines roles and responsibilities, including timely and appropriate enforcement response and the maintenance of ICIS-Air via the Exchange Network. Your agency will ensure that all relevant source notification and report information is entered as provided in the Agreement into the specified EPA database system to meet your recordkeeping/reporting requirements.

8. This full approval and delegation delegates to WDOH authority to implement and enforce the Radionuclides NESHAPs, as in effect on July 1, 2021. Radionuclides NESHAPs that that are promulgated or revised substantively after that date are not delegated to WDOH.

9. This approval and delegation does not extend to any additional State standards or requirements, including other State standards or requirements regulating radionuclide air emissions. Section 116 of the CAA provides that, with some exceptions not applicable here, nothing in the CAA precludes or denies the right of any State or political subdivision thereof to adopt or enforce any standard or limitation respecting emissions of air pollutants or any requirement respecting control or abatement of air pollution so long as the State requirement is not less stringent than a standard or limitation in effect under an applicable implementation plan or under section 111 or 112 of the CAA. Washington State standards that are more stringent than the Radionuclides NESHAPs are enforceable as provided under State law, but are not enforceable under the CAA or in any way part of this full approval and delegation of the Radionuclides NESHAPs to WDOH.

10. The WDOH may receive full approval and delegation of newly

[4] For purposes of this Table, the terms in quotations have the meaning assigned to them in 40 CFR 63.90.

promulgated or revised Radionuclides NEHAPs by the following streamlined process: (1) WDOH will send a letter to the EPA requesting delegation for such new or revised Radionuclides NESHAPs which WDOH has adopted by reference into Washington regulations, reference its previous demonstration, and reaffirm that it still meets the criteria for any full approval and delegation of the NESHAPs; (2) the EPA will send a letter of response back to WDOH granting approval of the delegation request (or explaining why the EPA cannot grant the request), and publish notice of the EPA's approval in the **Federal Register**; (3) WDOH does not need to send a response back to the EPA.

11. Although WDOH is not obligated to request or receive future delegations of the Radionuclides NESHAPs, the EPA encourages WDOH, on an annual basis if the Federal standards have changed, to revise its rules to incorporate by reference newly promulgated or revised Radionuclides NESHAPs and request updated delegation of those standards.

V. Summary of Proposed Action

The EPA proposes to fully approve WDOH's request for approval and delegation of authority to implement and enforce the Radionuclides NESHAPs. Pursuant to the authority of section 112(l) of the CAA, this approval is based on the EPA's finding that State law, regulations, and agency resources meet the requirements for full straight program approval and delegation of authority as specified in 40 CFR 63.91. The purpose of this full approval and delegation is to acknowledge WDOH's ability to implement a Radionuclides NESHAPs program within the State of Washington (except with respect to Indian country, as discussed in Section VI. of this preamble, and to continue the transfer of primary implementation and enforcement responsibility for this program from the EPA to WDOH. Although the EPA will look to WDOH as the lead for implementing delegated Radionuclides NESHAPs for its sources, the EPA retains authority under section 113 of the CAA to enforce any applicable emission standard or requirement, if needed. With this approval, WDOH may request newly promulgated or revised Radionuclides NESHAPs by way of a streamlined process.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator has the authority to approve NESHAP delegation requests that comply with CAA section 112(l) and applicable Federal regulations. In reviewing NESHAP delegation requests, the EPA's role is to approve State choices, provided that they meet the criteria and objectives of the CAA and the EPA's implementing regulations. Accordingly, this proposed action would merely approve the State's request as meeting Federal requirements and does not impose additional requirements under the CAA beyond those imposed by State law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practical and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This proposed full approval and delegation of the Radionuclides NESHAPs would not apply to sources or activities located in Indian country, as defined in 18 U.S.C. 1151.[5] Consistent with previous Federal program approvals or delegations, the EPA will continue to implement the NESHAPs in Indian country in Washington because WDOH has not adequately demonstrated authority over sources and activities located within the exterior boundaries of Indian reservations and in other areas of Indian country. In those areas of Indian country, this proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). The one exception is within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided State and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area.

[5] Under this definition, the EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation.

List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Intergovernmental relations, Radionuclides, Reporting and recordkeeping requirements.

Dated: July 15, 2022.

Casey Sixkiller,

Regional Administrator, Region 10.

[FR Doc. 2022–15553 Filed 7–20–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 224

[Docket No. FRA–2021–0080, Notice No. 1]

RIN 2130–AC77

Reflectorization of Rail Freight Rolling Stock; Codifying Existing Waivers

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA proposes to amend its standards for Reflectorization of Rail Freight Rolling Stock (Reflectorization Standards) to codify waivers and remove the outdated implementation schedule. The proposed changes are expected to enhance safety, promote innovation, clarify existing requirements, and reduce unnecessary paperwork burdens. The proposed amendments are consistent with the mandate of the Infrastructure Investment and Jobs Act (IIJA), which requires FRA to review and analyze certain longstanding waivers to determine whether incorporating the

waivers into FRA's regulations is justified.

DATES: Comments on the proposed rule must be received by September 19, 2022. Comments received after that date will be considered to the extent practicable.

ADDRESSES:

Comments: Comments related to Docket No. FRA–2021–0080 may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *https://www.regulation.gov;* this includes any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Check Kam, Mechanical Engineer, Office of Railroad Safety, at telephone: (202) 366–2139 or email: *check.kam@dot.gov;* or Michael Masci, Senior Attorney, Office of the Chief Counsel, at telephone: (202) 493–6037 or email: *michael.masci@dot.gov.*

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

AAR—Association of American Railroads
ASLRRA—American Short Line and Regional Railroad Association
ASTM—ASTM International (formerly known as American Society for Testing and Materials)
CE—Categorical Exclusion
CFR—Code of Federal Regulations
DOT—Department of Transportation
EA—Environmental Assessment
EIS—Environmental Impact Statement
FHWA—Federal Highway Administration
FR—Federal Register
FRA—Federal Railroad Administration
GS—General Schedule
IIJA—Infrastructure Investment and Jobs Act (Pub. L. 117–58)
IRFA—Initial Regulatory Flexibility Analysis
LED—Light-Emitting Diode
MOW—Maintenance of Way
NEPA—National Environmental Policy Act
NPRM—Notice of Proposed Rulemaking
OMB—Office of Management and Budget
PRA—The Paperwork Reduction Act
RIT—Run-Into-Train
RRA—Running Repair Agent
S–916—AAR's Standard S–916; Retroreflective Comparator Panel Requirements
SCABT—Single Car Air Brake Test
SIA—Specific Intensity per unit Area
STB—Surface Transportation Board
THEERP—Tourist, Historic, Excursion, Educational, Recreational, or Private
TTI—Texas A&M Transportation Institute
UMLER—Universal Machine Language Equipment Register
U.S.C.—United States Code
Volpe—Volpe National Transportation Systems Center

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I. Executive Summary

Purpose of the Regulatory Action

FRA periodically reviews, and proposes amendments to, its regulations to identify ways to enhance safety, and update regulatory requirements. This proposed rule is expected to enhance safety, promote innovation, reduce unnecessary costs, and clarify existing requirements. Moreover, FRA expects reduced environmental waste resulting from not needlessly replacing retroreflective sheeting prior to the end of its useful life.

This proposed rule would respond to the mandate of section 22411 of the IIJA (Pub. L. 117–58) which requires the Secretary to review and analyze existing waivers issued under 49 U.S.C. 20103 that have been in continuous effect for a 6-year period to determine whether issuing a rule consistent with the waiver is in the public interest and consistent with railroad safety. After conducting the appropriate analysis, if the Secretary concludes that it would be in the public interest and consistent with railroad safety to initiate a rulemaking to incorporate into the regulations the relevant aspects of the waivers analyzed, section 22411 specifically authorizes the Secretary to initiate such a rulemaking.

Summary of the Regulatory Action

The Reflectorization of Rail Freight Rolling Stock (Reflectorization Standards or Part 224) contain minimum safety requirements to help motor vehicle operators contain minimum safety requirements to help motor vehicle operators see rail freight rolling stock at night and under conditions of poor visibility. Part 224 was designed to reduce the number and severity of highway-rail grade crossing accidents and deaths, injuries, and property damage resulting from those accidents. Generally, FRA has provided two types of relief from part 224's requirements: (1) relief to THEERP operations, because they do not typically travel over low visibility highway-rail grade crossings at nighttime; and (2) relief to allow the use of a performance-based method (comparator panels) to determine when to replace reflectorization sheeting. FRA proposes to codify these waivers for two reasons: (1) freight rolling stock used exclusively for THEERP purposes do not typically travel over low visibility highway-rail grade crossings at nighttime; and (2) to allow the replacement of retroreflective sheeting to be based on alternative methods of evaluating its effectiveness. Allowing for performance-based methods of reflectorization evaluation and replacement is a more reliable and accurate way to evaluate the effectiveness of the retroreflectivity of the required sheeting than part 224's current 10-year default replacement cycle. Codifying these waivers is

expected to enhance safety (*i.e.,* by ensuring retroreflective sheeting is replaced when it is no longer effective), promote innovation, and reduce unnecessary paperwork burdens for both industry and FRA by eliminating the need to continue to use the waiver process for relief. Codifying these waivers would also provide the railroad industry with regulatory certainty as to the applicability of part 224 to equipment used for THEERP purposes, while enhancing safety.

Finally, FRA proposes to remove § 224.107, which has become outdated. Section 224.107 requires the locomotive fleet population to be fully equipped with part 224 compliant retroreflective sheeting by November 28, 2010, and the freight car fleet to be compliant by November 28, 2015. FRA is proposing to remove this section, because the implementation dates have passed and are no longer necessary to have in the regulation.

Costs and Benefits of the Proposed Regulatory Action

The proposed rule would eliminate the need for railroads to submit waiver petitions (and repeated extensions of those waivers every 5 years) from part 224 for certain older railroad equipment used in THEERP operations, and eliminate the Federal Government's need to review and approve the waiver petitions and extension requests. In addition, the proposed rule would allow railroads and private car owners to replace retroreflective sheeting based on performance, instead of time, thus increasing efficient use of resources and reducing environmental waste from discarding retroreflective sheeting prior to the end of its useful life. FRA estimates there will be minor costs for purchasing and recalibration of the comparator panels used to evaluate retroreflective sheeting, and training employees in their use (about 0.2% of total NPRM costs).

FRA expects the proposed rule to enhance safety, promote innovation, clarify existing requirements, and reduce unnecessary burdens. Entities that have been operating under the THEERP waivers and performance-based waivers using a comparator panel to evaluate retroreflective sheeting have not shown an increase in accidents/incidents. Also, retroreflective sheeting that is performing poorly would likely be replaced sooner under the NPRM than under the existing 10-year replacement cycle, better ensuring continued effectiveness of the sheeting. Overall FRA estimates the proposed rule will result in net benefits in terms of businesses benefits. FRA's estimates of benefits for the NPRM are shown in the table below.

TABLE ES–1—SUMMARY OF TOTAL BENEFITS OVER THE 20-YEAR PERIOD

[2020 Dollars]

Impact	Undiscounted	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Baseline Cost	$540,747,953	$286,435,001	$402,248,463	$27,037,438	$27,037,415
Baseline Costs consist of Visual Inspection & Replacement, 10-Year Renewal, Transportation of Cars Typically not Interchanged, and Waivers.					
NPRM Cost	$436,091,940	$231,038,590	$324,420,840	$21,808,408	$21,806,176
NPRM Costs for Visual Inspection & Replacement; Periodic Evaluation & Retroreflective Sheeting Replacement (Performance-Based); Transportation of Cars Typically not Interchanged; 10-Year Renewal (@15% of Cars, Provides Flexibility for Small Entities); and Comparator Panel Purchase, Recalibration, and Employee Training.					
Net Benefits	$104,656,013	$55,396,411	$77,827,623	$5,229,029	$5,231,239
Government Costs for Waivers (Baseline)	$167,171	$89,183	$124,739	$8,418	$8,384

Qualitative Benefit: Reduced environmental waste from not replacing effective reflective sheeting prematurely.

II. Statutory and Regulatory Background

A. Existing Reflectorization Requirements

The Reflectorization Standards require retroreflective sheeting on the sides of rail freight rolling stock to enhance the visibility of trains. The final rule establishing the Reflectorization Standards in 2005 did not discuss how it would apply to equipment used for THEERP purposes.[1] By default, THEERP operations were required to comply with the Reflectorization Standards in the same manner as conventional railroads. THEERP operations did not comment during the rulemaking proceeding and FRA did not anticipate the challenges THEERP operations would encounter when attempting to bring their equipment into compliance with the Reflectorization Standards. THEERP operations began requesting relief through FRA's waiver process shortly after FRA published the Reflectorization Standards.[2] Their petitions for waiver explained the operational differences between THEERP entities and conventional railroads and the relative corresponding disutility of reflectorization during such operations. After more fully considering these differences, FRA granted a series of waivers excluding equipment used for THEERP purposes from the Reflectorization Standards.[3]

Currently, reflectorization is required to be replaced after no more than 10 years of service, regardless of its condition at the time of replacement (49 CFR 224.111). FRA's research when developing the Reflectorization Standards concluded that the durability and adhesive properties of the microprismatic retroreflective material could provide adequate luminance intensity levels and be sustained for up to 10 years with minimum maintenance.[4] At the time, it was not clear how the sheeting would withstand real-world railroad operating conditions or whether it could be effective for longer than 10 years. In 2015, after using the sheeting for close to 10 years, it became evident, that under certain circumstances, it could continue to perform as required beyond 10 years. To

[1] 70 FR 144, January 3, 2005.

[2] *See e.g.,* Docket Numbers FRA–2005–2308 (Strasburg Railroad Company) and FRA–2008–0021 (Lavacot Locomotive Works).

[3] A list of active waivers FRA has issued to THEERP operations is available in the docket.

[4] 70 FR 145, January 3, 2005.

better tailor the reflectorization requirements to the actual condition of the sheeting, the railroad industry began developing an alternate method to evaluate the effectiveness of the sheeting. After successful initial results, AAR, on behalf of its member railroads, petitioned FRA for relief from the Reflectorization Standards to use an alternate method to determine when to replace the retroreflective sheeting.[5] FRA granted a waiver to AAR to develop alternate methods of evaluating the effectiveness of the sheeting and to implement a pilot program for in-service testing.[6]

B. Waivers Excluding From Part 224 Rail Freight Rolling Stock Used Only for THEERP Purposes, Except for Incidental Freight Service

As of 2022, the Safety Board has granted relief from part 224 in response to 14 waiver petitions from 12 different railroads that operate rail freight rolling stock used exclusively for THEERP purposes. In some rare instances, the subject equipment is also used for incidental freight services when no other equipment is available. Railroads petitioned for relief, because adding retroreflective sheeting to their equipment would detract from its aesthetic or historical nature. Such equipment is typically not interchangeable, generally does not travel in the dark, and operates at low speeds and on rail lines not connected to the general railroad system. In addition, such equipment often travels over crossings protected by automatic warning gates and flashing lights, or the equipment travels over crossings at a much lower frequency than freight equipment. These operating conditions significantly reduce the benefit of retroreflective sheeting, which increases visibility of trains primarily during nighttime conditions and at passive grade crossings. When deciding these waivers, the Safety Board reviewed available records and found that the specific railroad operations and operating environments demonstrated no history of accidents at grade crossings resulting from low visibility.

While monitoring implementation of these waivers, FRA reviewed all accident and incident reports from railroads operating under the waivers, and identified no injuries or deaths that were attributable to the lack of part 224 reflectorization. Given the railroad industry's long-term success in safely operating under these waivers, FRA is proposing to codify them in part 224. This change would eliminate the need for further waivers and the associated employee hours spent on their documentation and renewal every five years.

C. Waivers Allowing Development and Testing of Alternative Methods (Comparator Panel Evaluation) To Determine When To Replace Retroreflective Sheeting

On September 22, 2015, AAR petitioned FRA[7] for a waiver from compliance with 49 CFR 224.111. That section requires retroreflective sheeting to be replaced with new sheeting no later than 10 years after the date of initial installation, regardless of the sheeting's condition at the time of replacement. In support of the petition, AAR contracted with TTI to test and evaluate retroreflective sheeting on approximately 900 freight cars and approximately 100 locomotives in service. That testing found that generally sheeting that had been applied to rail cars more than nine years before met or exceeded the Reflectorization Standards. This data, collected in 2012 and in 2014 using a RoadVista 922 retroreflectometer,[8] showed the performance of the retroreflective sheeting on both rail cars and locomotives is more a function of material condition and cleanliness than it is of the amount of time passed since the application date. In particular, the sheeting demonstrated that, after more than nine years in service, it performed effectively (above the minimum thresholds outlined in Table 1 to subpart B of part 224) and should be allowed to remain in service if properly maintained. The field data collected by AAR supported using an alternative method in lieu of the 10-year replacement cycle for retroreflective sheeting on rail freight rolling stock, provided that the sheeting is undamaged and maintained in a relatively clean condition. Thus, AAR sought a waiver to extend the replacement requirement for at least three years to develop an alternate evaluation method. On November 25, 2015, the Safety Board granted AAR relief from the 10-year replacement cycle for three years.[9]

A retroreflectometer, like the hand-held RoadVista 922 that AAR and TTI used to gather data in support of their waiver petition, is the most direct form of measuring sheeting's retroreflective value. Retroreflectometers are costly (approximately $10,000 or more per unit) and are cumbersome to use, and therefore are not currently practical for regular use in a railroad shop or field environment. For a more practical option, the AAR Equipment Engineering Committee looked to the Federal Highway Administration (FHWA) Comparison Panel Method. FHWA indicates that the comparison panels are fabricated to have retroreflectivity values at or above the minimum required levels and are used to assess highway signs that have marginal retroreflectivity.[10] AAR proposed to develop a standard comparator panel that could be used to assess rail freight rolling stock retroreflective sheeting to the minimally required photometric performance requirements of part 224. This standard comparator panel would be fabricated to have retroreflectivity values at or above the minimum photometric values outlined in § 224.103.

After approximately three years of development, AAR finalized the design, specifications, and procedures for a standard comparator panel for evaluating the effectiveness of retroreflective sheeting on rail freight rolling stock, and on July 27, 2018, AAR petitioned FRA for final approval to use its comparator panel process in lieu of the 10-year replacement cycle.[11] On October 10, 2018, the Safety Board granted the petition finding that the comparator panel could be used to reliably evaluate the effectiveness of the installed retroreflective sheeting and that the design and specifications of AAR's proposed comparator panel met the minimum photometric performance requirements in § 224.103.[12]

[5] Docket Number FRA–2015–0105, Document No. 1 (available at *https://www.regulations.gov/document/FRA-2015-0105-0001*).

[6] Docket Number FRA–2015–0105, Document No. 22 (available at *https://www.regulations.gov/document/FRA-2015-0105-0022*).

[7] Docket Number FRA–2015–0105, Document No. 1 (available at *https://www.regulations.gov/document/FRA-2015-0105-0001*).

[8] A retroreflectometer is an instrument (typically handheld) capable of accurately and reliably measuring the retroreflective properties of retroreflective sheeting materials.

[9] *https://www.regulations.gov/document/FRA-2015-0105-0009.*

[10] *https://safety.fhwa.dot.gov/roadway_dept/night_visib/sign_retro_4page.pdf.*

[11] *https://www.regulations.gov/document/FRA-2015-0105-0021.*

[12] Docket Number FRA–2015–0105, Document No. 22 (available at *https://www.regulations.gov/document/FRA-2015-0105-0022*).

III. Overview and Technical Discussion of Proposed Requirements

A. Proposal To Exclude From Part 224 Rail Freight Rolling Stock Used Only for THEERP Purposes, Except for Incidental Freight Service

The Reflectorization Standards require retroreflective sheeting on the sides of rail freight rolling stock to enhance the visibility of trains. These standards were developed, generally, because low visibility, particularly at highway-rail grade crossings, can contribute to motorists colliding with rail equipment. According to data from 1992 through 2001, gathered from the FRA Office of Safety Analysis' crossing accident database, the number of accidents involving motor vehicles running into trains occupying grade crossings accidents (RIT accidents) was roughly 23% of all highway-rail grade crossing accidents. Almost 80% of these RIT accidents occurred during nighttime conditions (dusk, dawn, or darkness) and involved the highway vehicle striking the train after the first two units of the consist. Adding reflectorization to rail equipment reduces the likelihood of RIT accidents. When developing the Reflectorization Standards, FRA relied on a report from the John A. Volpe National Transportation Systems Center (Volpe Center Report) [13] to develop specific retroreflectivity requirements based on minimum threshold detectability levels by motorists. The Volpe Center Report defined Category 1 RIT accidents as accidents or collisions involving a highway vehicle striking the train after the lead unit and reported roughly 70% of the Category 1 RIT accidents (from 1975 to 1996) occurred during nighttime conditions. Category 1 RIT accidents during nighttime conditions at crossings with passive warning devices accounted for 3.0% of the total accidents during this 22-year period. This became the intended target population for the Reflectorization Standards.

The Reflectorization Standards exclude locomotives and passenger cars used exclusively in passenger service,[14] because generally, the conspicuity of equipment used in conventional passenger service is significantly better than the conspicuity of equipment used in freight service.[15] For example, highway-rail grade crossings along passenger routes are typically better protected than crossings used exclusively in freight service. Also, many passenger cars have bright exteriors or are painted in contrasting colors and are maintained in a much cleaner condition than freight cars. In addition, passenger cars typically have inside lights which are visible through the side windows that run the entire length of the car. Due to enhanced conspicuity and better protected crossings, reflectorization is not necessary for locomotives and passenger cars used exclusively for passenger service. Such equipment is currently operating without retroreflective sheeting and FRA is unaware of any accidents or incidents involving this equipment that would have been mitigated by the presence of reflectorization.

Similarly, retroreflective sheeting provides no clear safety benefit for equipment used exclusively for THEERP purposes because like other passenger equipment, equipment used exclusively for THEERP purposes is more highly visible than conventional railroad equipment and, as discussed above, is used in a more protected operating environment. For these reasons, FRA proposes to exclude equipment used for THEERP purposes from the Reflectorization Standards.

B. Proposal To Allow Alternative Methods (Comparator Panel Evaluation or Retroreflectometer Measurement) To Determine When To Replace Retroreflective Sheeting

As noted above, in 2015, FRA granted AAR's waiver petition providing relief from the replacement requirement in § 224.111 for three years, allowing time for AAR to develop an alternate method for evaluating the effectiveness of retroreflective sheeting more than 10 years old.[16] AAR initially proposed to adopt a minimum performance level of 45 candela per foot-candle per square foot (cd/fc/ft^2) [17] for a yellow comparator panel, which AAR stated was consistent with the recommendation provided by the Volpe Center Report, but did not mirror the complete specifications in § 224.103. After FRA expressed concerns about the proposed specifications, AAR agreed to develop standard comparator panels that would meet the complete minimum photometric performance requirements in § 224.103 (*i.e.,* 45 cd/fc/ft^2 for yellow or fluorescent yellow sheeting and 75 cd/fc/ft^2 for white sheeting with a specific condition of a 30° entrance angle and a 0.5° observation angle).[18] Following development, FRA agreed to allow a pilot program for AAR to test the comparator panel method in service.[19] A trained railroad inspector would place a comparator panel immediately adjacent to, or overlapping, retroreflective sheeting installed on rail freight rolling stock, and determine its relative brightness. When the comparator panel was equal to, or brighter than, the installed sheeting, it was replaced. Testing showed the comparator panel is an accurate and easy way to determine when retroreflective sheeting needs to be replaced in compliance with the Reflectorization Standards. Similarly, a retroreflectometer device can be used to take direct measurements of the sheeting and be an effective performance-based method for evaluating retroreflectivity. As such, FRA proposes to add comparator panel evaluation and direct measurements with a retroreflectometer, as alternative options to determine compliance with the Reflectorization Standards. These methods would provide flexibility for the rail industry while, in most instances, enhancing safety because allowing for alternative methods of reflectorization evaluation and replacement is a more reliable and accurate way to evaluate the effectiveness of the retroreflective sheeting than part 224's current 10-year default replacement cycle.

1. The Existing 10-Year Replacement Cycle Ensures Effective Retroreflective Sheeting, but Often Requires Replacement Sooner Than Necessary

Currently, all retroreflective sheeting, required by part 224, must be replaced with new sheeting after 10 years of service, regardless of its condition at the time of replacement. FRA established the 10-year replacement cycle based on the 10-year useful life of the sheeting according to most manufacturers.[20] This means the retroreflective sheeting is expected to maintain its performance for no less than 10 years. As such, sheeting that complies with the Reflectorization Standards, when installed, is expected to continue to comply throughout the

[13] Carroll, A.A., Multer, J., Williams, D., & Yaffee, M.A. *Safety of Highway-Railroad Grade Crossings: Freight Car Reflectorization.* DOT/FRA/ORD–98/11, John A. Volpe National Transportation Systems Center, January 1999.

[14] 49 CFR 224.3(c).

[15] 70 FR 149.

[16] Docket Number FRA–2015–0105, Document No. 9 (available at *https://www.regulations.gov/document/FRA-2015-0105-0009*).

[17] The units of *cd/fc/ft*^{2} are equivalent to the units of *cd/lux/m*^{2} (candela per lux per square meter) and are often used interchangeably, and the Specific Intensity per unit Area (SIA) is another notation for referencing retroreflection values, which is expressed in the units above.

[18] Docket Number FRA–2015–0105, Document No. 10 (available at *https://www.regulations.gov/document/FRA-2015-0105-0010*).

[19] Docket Number FRA–2015–0105, Document No. 22 (available at *https://www.regulations.gov/document/FRA-2015-0105-0022*).

[20] 70 FR 157.

10-year cycle despite inevitable accumulations of dirt and environmental aging. This regulatory approach helps ensure rail freight rolling stock is equipped with effective retroreflective sheeting, but it may also result in railroads unnecessarily replacing sheeting that continues to be effective beyond 10 years of service.

When the initial 10-year replacement deadline approached, and in support of AAR's petition to the FRA, AAR conducted testing on retroreflective sheeting of approximately 900 railcars and approximately 100 locomotives using a RoadVista 922 retroreflectometer.[21] The installation dates for retroreflective sheeting in the sampling were from 2005 to 2014. Based on the performance measurements, AAR believed the sheeting could continue to comply with the Reflectorization Standards for a significant amount of time beyond 10 years of service.

On January 27, 2017, AAR submitted a status report to FRA on its reflectorization waiver,[22] providing field measurement data for retroreflective sheeting evaluated ''as is'' and ''after cleaning'' for service ages ranging from 1 to nearly 10 years of age. Prior to AAR's field measurements, FRA did not have any data showing the performance of retroreflective sheeting in the field, but expected it would perform at or above the minimum detectable threshold levels required by the Reflectorization Standards throughout its useful life. The data confirmed that retroreflective sheeting can perform well up to, and perhaps beyond, 10 years, especially when periodically cleaned. The data also showed that not all initially applied compliant material performs equally well throughout its anticipated useful life and can be affected by the type of service or commodity (salt, coal, chemicals, etc.) and environmental conditions (multiple freeze-thaw cycles, extreme cold or heat, high humidity, etc.) that the equipment endures. Under the more extreme of these circumstances, samples yielded measurements, after being cleaned, that were below the minimum proposed comparator panel values just 1 to 2 years after application. One cause for the poor performing samples was found to be internal degradation of the sheeting due to damage or delamination, which can lead to mold or mildew growth over the microprismatic layer. Such poor performing or internally degraded material, could be identified early on through use of the proposed comparator panel or direct measurements with a retroreflectometer, allowing for earlier replacement. Overall, this would lead to better performing sheeting in service, resulting in an increase in safety compared to a blanket application of a 10-year replacement cycle.

AAR estimates the number of freight cars (not including locomotives) that would need full replacement of retroreflective sheeting based on the 10-year age limit was 283,500 freight cars in 2016, 152,000 freight cars in 2017, 149,000 freight cars in 2018, 96,500 freight cars in 2019, and 93,000 freight cars in 2020.[23] These figures are for freight cars only and do not include locomotives. In 2020, AAR estimated the average cost of one retroreflective sheet (4 inches by 18 inches) at $1.31 and the average labor rate to be approximately $141.38 per hour ($2.36 per minute). AAR also estimated that the length of time allotted for the application of the first sheet per side of a car is 9.2642 minutes and 2.6197 minutes for each additional sheet. Assuming each freight car is equipped with a minimum 3.5 square feet of retroreflective material, this equates to a minimum of 25 minutes per side for each car. Thus, by 2020 it would have cost an estimated $105 million or more for full replacement of retroreflective sheeting based on the 10-year age limit during that 5-year period.[24] The cost estimate for 2019 and 2020, alone, was approximately $26 million. However, between the 4th quarter of 2018 through 3rd quarter of 2020 when AAR was implementing the comparator panel process, AAR estimated that 1,143,500 cars were evaluated with the comparator panel during a single-car airbrake test (SCABT) and that an average of 0.71 sheets per car was replaced for all cars under this procedure. AAR indicated that, with the comparator panel evaluation, it takes about 3.2743 minutes to clean and 2.7574 minutes to inspect retroreflective material per car (6 minutes total). Thus, the cost estimate between the 4th quarter of 2018 through 3rd quarter of 2020 for using the comparator panel during SCABT was approximately $42 million.[25] This estimate may include sheeting that was replaced as a result of being damaged, missing, or obscured during the SCABT, as required under § 224.109, and therefore does not entirely reflect the sole cost of sheeting that was replaced as a result of failing the comparator panel, and does not include the cost of the comparator panels themselves. To better understand the efficacy of the comparator panels, FRA seeks comment from the industry regarding the proportion of sheets that were replaced as a direct result of not meeting the performance criteria versus sheets that were replaced under § 224.109. When FRA granted AAR relief from the Reflectorization Standards to develop and test the comparator panel method, AAR avoided unnecessarily replacing 584,500 pieces of effective retroreflective sheeting that would have cost approximately $79 million during those first three years. Codifying the performance-based method will avoid requiring railroads to unnecessarily replace the sheeting on approximately 1.5 million freight cars over the next 10 years.

In addition, FRA believes railroads may be unnecessarily replacing compliant retroreflective sheeting because the inspection and replacement process can be cumbersome, and detailed tracking is not required. Section 224.109 requires retroreflective sheeting to be visually inspected for presence and condition at the time of SCABT [26] or annual locomotive inspection and replaced at that time, if more than 20% of the required area is missing, damaged, or obscured. It is unclear to FRA, if, or how, railroads update Universal Machine Language Equipment Register (UMLER) or other records to show the date that retroreflective sheeting is replaced based on inspection results. On October 1, 2020, FRA sent an inquiry to AAR with questions regarding the reflectorization replacement process before and after the waiver was granted.[27] FRA asked how the UMLER system is updated with the date of installation or replacement if only a portion of retroreflective sheeting is replaced during the SCABT or annual locomotive inspection. AAR responded that updates have been inconsistent because the industry no longer relies on the information provided by the UMLER fields (because relief from the 10-year replacement cycle was in place). Thus, it is FRA's understanding that the date of installation is not updated when only a portion of the minimum required

[21] Docket FRA–2015–0105, Document No. 1 (available at *https://www.regulations.gov/document/FRA-2015-0105-0001*) Appendix B: Supporting Documentation from AAR Equipment Engineering Committee.

[22] Docket FRA–2015–0105, Document No. 23.

[23] Docket FRA–2015–0105, Document No. 24.

[24] (774,000 freight cars) × [(14 sheets) × ($1.31 per sheet) + (50 minutes) × ($2.36 per minute)] = $105,527,000.

[25] (1,143,500 freight cars) × [(0.71 sheets) × ($1.31 per sheet) + (6 minutes + 9.2642 minutes) × ($2.36 per minute)] = $42,323,000.

[26] AAR estimates the industry median time in 2020 between SCABT is approximately 25.6 months.

[27] Docket FRA–2015–0105, Document No. 24.

sheeting area is replaced under § 224.109. Accordingly, when the 10-year replacement becomes due on the remaining retroreflective sheeting that was initially installed on a piece of rail freight rolling stock, without knowing a portion of the sheeting was recently replaced, railroads may replace the almost new retroreflective sheeting along with the retroreflective sheeting due for the 10-year replacement. In this scenario, replacing the almost new retroreflective sheeting may be premature and unnecessary per the regulation and likely without any safety benefit.

During the approximately 3-year period of relief from the 10-year replacement requirement from 2015 to 2018, and prior to AAR implementing the pilot program to test its performance-based method, the majority of retroreflective sheeting in service on AAR-member railroads was installed in 2005 and continued in service beyond 10 years. After reviewing pertinent records, FRA is unaware of any reportable RIT accidents attributable to under-performing retroreflective sheeting. Once the pilot program was approved to test the comparator panel method on in-service equipment, all sheeting on equipment within AAR interchange was evaluated using the comparator panels whenever the equipment underwent the SCABT or annual locomotive inspection, and replaced as necessary when sheeting failed the comparator evaluation. By gradually replacing retroreflective sheeting as needed, a significant amount performed effectively beyond 10 years and was allowed to continue in service beyond 10 years. These findings help confirm AAR's conclusion that retroreflective sheeting can perform effectively beyond 10 years of service.

Thus far, only AAR-member railroads have participated in the pilot program to test the comparator panel method, but FRA anticipates additional railroads would choose to use it, if codified. In response to the public notice FRA published related to AAR's waiver petition, three commenters expressed concurrence with the proposal of an alternative method in lieu of the 10-year replacement cycle and suggested relief should be applied to all railroads.[28] However, FRA could not apply the relief to all railroads at that time, because not all railroads were party to the waiver petition. Thus, short line railroads, private car owners, and other entities not affiliated with AAR are still subject to the 10-year replacement cycle.

FRA believes allowing an alternative evaluation of installed retroreflective sheeting would better tailor the replacement requirements to the condition of the sheeting. The retroreflective sheeting has a finite service life and performance-based methods of evaluation will help ensure: (1) sheeting that continues to perform well after the 10 years of service can remain in service; and (2) sheeting that underperforms before the 10 years of service can be identified and replaced on a more frequent, as needed basis. FRA understands that not all railroads may benefit from the use of alternative methods because of the financial burden of procuring a comparator panel or retroreflectometer device and related training for employees, particularly for some small railroads with limited equipment. Such railroads may prefer to continue to utilize the 10-year replacement cycle. Therefore, FRA proposes to retain the 10-year replacement cycle as an option.

2. FRA Worked Closely With AAR and TTI To Develop a Comparator Panel That Could Be Used With the Reflectorization Standards

Over approximately three years, FRA worked closely with AAR and TTI to develop a comparator panel that could evaluate retroreflective sheeting and determine whether it complies with existing photometric performance requirements outlined in § 224.103. The Reflectorization Standards (Table 1 to subpart B of part 224) included minimum photometric performance requirements (*i.e.,* minimum SIA) for both yellow and white retroreflective material at observation angles of 0.2° and 0.5° and light entrance angles of −4° and 30° based on typical grade crossing configurations and the standards in ASTM D 4956–01a.[29] The Volpe Center Report established that the minimum threshold SIA of 45 cd/fc/ft^2 is sufficient for detectability and recognition of a crossing train by an approaching motorist. This value was derived from the example of a vehicle traveling 50 mph on wet level pavement, a 2.5 second driver reaction time, and a necessary stopping distance of 500 feet to bring the vehicle to a safe stop without hitting the crossing train. In many cases, the reflected light received by the observer is reduced by three factors: the incidence (or entrance angle), the divergence (or observation) angle, and the properties of the retroreflecting material.

Appendix H of the Volpe Center Report further showed the observation angle on a level road at a detection distance of 500 feet ranges from 0.15° for small passenger cars to 0.55° for cab-over-engine trucks, as the elevation from the driver to the headlight increases. The observation angle has a greater effect on reflectivity than does the entrance angle. The entrance angle is also a function of the approach of the vehicle with respect to the crossing. Appendix H also indicated that FRA's Grade Crossing Inventory identified approximately 80% of all crossings having a crossing angle between 60° and 90°, 16% between 30° and 59°, and only 4% are between 0° and 29°. In essence, 80% of all crossings will have a vehicle (light) entrance angle of between 0° and 30° (with 0° being the head-on approach). Thus, the real-world scenarios outlined in the Volpe Center Report support the typical entrance and observation angles outlined in ASTM D 4956–01a for retroreflective material.

Additionally, in determining these minimum photometric performance requirements for the Reflectorization Standards, FRA extrapolated test data detailed in the Volpe Center Report out by 10 years, which is the manufacturer's stated useful life of the material. This extrapolation demonstrated that the forecasted SIA levels remained well above the minimum detection level established in the Volpe Center Report (45 cd/fc/ft^2). Furthermore, Table 1 to subpart B of part 224 specifies only the minimum values, as initially applied, for the retroreflectivity values for the given combinations of entrance (−4° and 30°) and observation angles (0.2° and 0.5°). The rule does not require that these initial values be retained for any particular length of time, *e.g.,* 5 or 10 years. However, it is reasonable to expect the material to perform well up to the manufacturer's stated useful life (*i.e.,* 10 years).

AAR began the development process by applying methodology similar to FHWA's comparison panels used for evaluating retroreflective materials (discussed in section II D above). The comparator panel was constructed by adding a set of fine dot matrix markings such that the target reflectivity was achieved at the desired boundary conditions. AAR planned an evaluation process that would allow a field inspector to view the comparator panel next to, or on top of, existing sheeting from a prescribed distance away with a light source perpendicular to the plane of the sheets. AAR believed this would most likely resemble the −4° entrance

[28] Docket Number FRA–2015–0105; comments from Railroad Supply Institute, Colorado Springs Utilities, and North America Freight Car Association.

[29] ASTM D 4956–01a: *Standard Specification for Retroreflective Sheeting on Traffic Control.*

angle and 0.2° observation angle configuration. Therefore, developing a comparator panel with sufficient retroreflectivity at this configuration would also inherently contain the minimum detection level (45 cd/fc/ft²) at the more oblique angles (30° entrance angle and 0.5° observation angle configuration) and would eliminate the need for a field inspector to evaluate sheeting at various angles and off center from the installed sheeting.

To find an appropriate target retroreflectivity for the comparator panel, AAR and TTI sampled part 224 compliant sheeting from various manufacturers and gathered the retroreflectivity measurements (with the 922 RoadVista) at each entrance and observation angle configuration. Correlation ratios were obtained between the two entrance angles (−4° and 30°) for each corresponding observation angle (0.2° and 0.5°) for all the samples. The lowest correlation ratio between all samples of 0.50 was then applied to the minimum threshold retroreflectivity of 45 cd/fc/ft², which relates to the 30° entrance angle, to obtain a corresponding retroreflectivity value at the −4° entrance angle. Because the apparent surface area of sheeting reduces as the angle at which it is viewed increases, a cosine correction factor was applied to compensate for the reduction of apparent size at the 30° entrance angle compared to −4° entrance angle. A standard sheet of reflectorization is typically 4-inches by 18-inches and has a total surface area of 72 square inches, but when viewed from 30 degrees off normal the apparent surface area is reduced to approximately 85% of the true total surface area, or 62 square inches. Taking the correlation ratio and cosine correction into consideration and applying it to the minimum threshold retroreflectivity of 45 cd/fc/ft², a minimum retroreflectivity value is obtained at for the −4° entrance angle and 0.2° observation angle configuration for a yellow comparator panel. To provide some assurance that the applied sheeting being evaluated remains suitable for a period after the SCABT or locomotive annual inspection is performed, AAR and FRA agree upon a minimum threshold value of 150 cd/fc/ft² (or cd/lux/m²). Also, to make manufacturing the comparator panel more feasible, a range was provided which set a maximum at 170 cd/fc/ft². The same methodology was applied to obtain the minimum retroreflectivity values for a white comparator panel which corresponded to minimum retroreflectivity value of 250 cd/fc/ft² and a maximum of 285 cd/fc/ft² for the −4° entrance angle and 0.2° observation angle configuration.

Both AAR and FRA felt it was necessary to define what the minimum retroreflectivity value is for the 30° entrance angle and 0.5° observation angle configuration because the comparator panels are typically manufactured by adding fine dot matrix layers to part 224 compliant reflectorization to reduce the overall retroreflectivity and achieve the desired level of retroreflectivity. This ensured that while the overall retroreflectivity was being reduced at the −4° entrance angle and 0.2° observation angle configuration to a target retroreflectivity value of 150 cd/fc/ft², it did not inadvertently drop below 45 cd/fc/ft² for the 30° entrance angle and 0.5° observation angle configuration. As previously mentioned, the existing Reflectorization Standards do not require that all initial retroreflectivity values be retained for a set period; however, it is reasonable to expect the sheeting to perform as intended for its useful life. Industry practice requires that the sheeting retain at least 80% of its initial values when subjected to 36 months of accelerated weathering.[30] Therefore, both AAR and FRA felt it was reasonable to require the comparator panels to have 80% of the minimum retroreflectivity value at the 30° entrance angle and 0.5° observation angle configuration, or 35 cd/fc/ft² for yellow panels and 60 cd/fc/ft² for white panels.

With the specifications for the retroreflective comparator panels established, AAR solicited samples from various retroreflective sheeting manufacturers made to the comparator panel specifications. AAR procured six sample comparator panels from one manufacture for evaluation and took measurements of the retroreflectivity with the 922 RoadVista. The results show that the six samples of comparator panels average an SIA value of about 160 cd/fc/ft² at the −4°/0.2° configuration and about 55 cd/fc/ft² at the 30°/0.5° configuration. While these values were from one single manufacturer, both AAR and FRA were confident that the specifications outlined for the comparator panel could be achieved from other manufacturers as well.

3. FRA Approved a Pilot Program To Test AAR's Standard S–916; Retroreflective Comparator Panel Requirements (S–916) in Service

On July 27, 2018, AAR petitioned FRA for approval of a pilot program to test its newly developed standard comparator panel and process for using it to evaluate retroreflective sheeting for compliance with the Reflectorization Standards instead of the 10-year replacement cycle required by § 224.111.[31] The Safety Board found the design and specifications of AAR's proposed comparator panel were acceptable and noted that when viewed at −4° entrance angle and 0.2° observation angle (−4°/0.2°), the comparative panel achieved the equivalent minimum detectable SIA, as referenced in the Volpe Center Report (45 cd/fc/ft² for yellow material or 75 cd/fc/ft² for white material), at an entrance angle of 30° and observation angle of 0.5° (30°/0.5°), or reasonably at a service worn estimate of 80 percent of these values. On October 10, 2018, the Safety Board approved of AAR's proposed pilot program.[32] To facilitate the pilot program, AAR finalized and adopted AAR Standard S–916, *Retroreflective Comparator Panel Requirements,* prescribing the requirements for comparator panels to be used in the performance evaluation of retroreflective sheeting on freight cars and locomotives. The pilot program is currently ongoing. Throughout the pilot program, within AAR interchange, comparator panel evaluations have been, and will continue to be, required for all retroreflective sheeting on freights cars during each SCABT and on locomotives during each annual inspection.

Currently, Table 3.1 of S–916 provides the following specifications for a comparator panel:

[30] ASTM D 4956–01a: *Standard Specification for Retroreflective Sheeting on Traffic Control.*

[31] Docket FRA–2015–0105, Document No. 21.

[32] Docket FRA–2015–0105, Document No. 22.

Table 3.1 Retroreflectivity requirements

Color	Required Retroreflectivity (cd/lx/m^2) at –4° entrance and of 0.2° observation angles		Required Retroreflectivity (cd/lx/m^2) at 30° entrance and of 0.5° observation angles
	Minimum	Maximum	Minimum
White	250	285	60
Yellow	150	170	35

In addition to the retroreflectivity specifications, S–916 also provided a comprehensive list of other aspects of the comparator panel. To maintain sufficient surface area for retroreflectivity, and for ease of use and versatile placement of the comparator panel on various parts of rail freight rolling stock, S–916 specifies that the retroreflective surface of the panels shall measure 4 inches by 4 inches and be equipped with a magnetic backing. Unlike the miscroprismatic retroreflective material required for rail freight rolling stock, the comparator panels shall be constructed of glass-beaded material or other material that displays uniform appearance when rotated and viewed with a light source. Because part 224 allows for horizontal and vertical placement of retroreflective sheeting, this helps eliminate the slight directional dependency of the panel that would otherwise be exhibited in prismatic material; however, this does not diminish the amount of retroreflectivity for the same given value.

AAR and FRA agreed that the comparator panels would need to contain pertinent information about the panel so that individuals using the panel could easily verify it was valid, *i.e.,* calibrated and/or certified. Thus, as a condition of FRA's approval of the comparator panels, FRA required the panels to have a waterproof and dust-proof label on the back side that contained the phrase ''Retroreflective Comparator Panel—Yellow'' or ''Retroreflective Comparator Panel—White;'' and the name of the manufacturer, the part, model, or serial number, the date the panel was manufactured, the target retroreflectivity level to which the panel was manufactured (measured in cd/lx/m^2), and a space provided for future recalibration date sticker(s). FRA and AAR concluded that a recalibration sticker would help ensure the panels stay within the specified retroreflectivity levels. Initially, an expiration date was considered, however, setting an expiration on a comparator panel that may continue to function as intended is contrary to the purpose for developing comparator panels to evaluate the sheeting. Thus, AAR built a recalibration requirement into S–916, to ensure that comparator panels are checked or recalibrated periodically to confirm they remain within the manufactured specifications for continued use. Specifically, S–916 requires the use of a sticker attached to the back of each comparator panel with a recalibration date specified.

To help implement its comparator panel standard, AAR published Specification M–944, *Retroreflective Sheeting Inspection Procedure* (M–944). M–944 provides the process for conducting a performance evaluation of retroreflective sheeting on railroad freight cars and locomotives using a comparator panel or electronic handheld retroreflectometer. An initial inspection of the car or locomotive includes cleaning and examination of sheeting with a light source approximately 15 feet away as a preliminary screening to determine if further inspection is necessary. If the perceived reflected light intensity of the entire installed sheeting appears brighter than that of the comparator panel, it does not need to be further evaluated with the comparator panel. Sheeting that has signs of condemnable degradation (*i.e.,* internal mold or mildew growth) also do not need to be further evaluated with the comparator panel, as they are simply replaced. If the perceived reflected light intensity of the entire installed sheeting does not appear brighter than that of the comparator panel and does not have signs of condemnable degradation (typically exhibiting dull or otherwise questionable retroreflectivity) it is evaluated by a comparator panel for evaluation (or a handheld retroreflectometer). The comparator panel is placed adjacent to or overlapping the target sheeting, and both are evaluated with a light source adjacent to the inspector's eye and from approximately 15 feet away. Sheeting that appears brighter than the comparator panel does not need to be further evaluated and does not need to be replaced. If the comparator panel appears brighter than the sheeting, or if the inspector cannot distinguish one as being brighter than the other, the sheeting shall be replaced. A handheld annular retroreflectometer can also be used to directly evaluate sheeting. The minimum retroreflective value to continue in service is 150 cd/lux/m^2 for yellow sheeting and 250 cd/lux/m^2 for white sheeting, when measured at $-4°$ entrance angle and 0.2° observation angle. Sheeting that yields retroreflective values below these minimums shall be replaced.

AAR incorporated the specifications of the comparator card and inspection procedures into AAR Interchange Rule 66, *Reflective Sheeting.* Rule 66 also established a new billing repair ''Why Made Code: 1F'' related to use of the comparator panel and replacing reflective sheeting for not meeting the minimum reflectivity levels per Rule 66. The existing ''Why Made Code: 49'' is still valid for reflective sheeting lacking FRA–224 stamp, damaged, obscured, or missing, for use with Job Codes 5500 and 5502. FRA seeks comment from AAR regarding the proportion of ''Why Made Code: 1F'' to ''Why Made Code: 49'' that was billed during freight car SCABT or locomotive annual inspection.

Since late 2018, AAR's alternate method has been widely used by industry (specifically within interchange among AAR member railroads). FRA understands the standard has been successful and has no record of accidents, incidents, or violations related using the standard. FRA is proposing to codify the current elements of the standard in this rulemaking proceeding and requests comments on whether the elements of the standard should be codified to continue use of the standard for complying with part 224 and make it an option for the entire railroad industry.

IV. Section-by-Section Analysis

Section 224.3 Applicability

Section 224.3 sets forth the scope and application of part 224. Part 224 generally applies to all railroad freight

cars and locomotives that operate over a public or private highway-rail grade crossing and are used for revenue or work train service. Existing paragraphs (a) through (d) of § 224.3 exclude from part 224's applicability, certain types of equipment and operations because they present a low risk of RIT collisions. FRA proposes to add paragraph (e) to exclude rail freight rolling stock used solely for THEERP purposes, except for incidental freight service. FRA is proposing to exclude equipment used only for THEERP purposes because (as discussed further in Section II C. and III A. of the supplementary materials above) those operations present a low risk of RIT collisions. Incidental freight service would include when a railroad uses rail freight rolling stock for other than THEERP purposes only on rare occasions as necessary to facilitate some of their operations. For example, California State Railroad Museum requested relief from part 224 for two locomotives used primarily for yard switching, freight service, and rarely in passenger (excursion) train service, but only when its steam locomotives fail.[33] In another instance, The Everett Railroad Company stated that its caboose car is retained primarily for use on excursion trains, historical and public relation events, along with possible, but very infrequent, use as a crew caboose or shoving platform.[34] For these particular instances, the freight train consist, as well as the railroad trackage, are short, and the trains operate at much lower speeds than typical freight service.

Section 224.107 Implementation Schedule

FRA proposes to remove this section. On November 28, 2005, when the Reflectorization Standards took effect, railroads operating rail freight rolling stock subject to this part, were required to commit to an implementation schedule for equipping their fleet with reflectorization. This section required such railroads to submit an implementation schedule to FRA for approval, or adopt FRA's proposed implementation schedule, equipping 10% of total freight fleet per year for 10 years, and 20% of total locomotive fleet per year for 5 years. This meant that by November 28, 2015, 100% of the freight fleet population would be fully equipped with part 224 compliant retroreflective sheeting. Similarly, by November 28, 2010, 100% of the locomotive fleet population would be fully equipped with part 224 compliant retroreflective sheeting. With the passage of time, railroads are no longer required to submit an implementation schedule or adopt FRA's proposed implementation schedule. Therefore, this section is outdated and FRA is proposing to remove the language to shorten and simplify part 224.

Section 224.109 Inspection, Repair, and Replacement

FRA proposes to revise paragraphs (a) and (b) to remove any references to § 224.107, because that section's requirements are outdated, and in this rulemaking proceeding FRA is proposing to remove it. Specifically, FRA proposes to remove the following language ''(§ 224.107 in the case of freight cars subject to § 224.107(a)(3))'' from paragraph (a), and the following language ''(§ 224.107 in the case of locomotives subject to § 224.107(b)(3))'' from paragraph (b).

Section 224.111 Renewal

FRA proposes to retitle this section from ''Renewal'' to ''Evaluation, and replacement of 10-year old or underperforming retroreflective sheeting.'' The existing title, ''Renewal,'' reflects the only current replacement option, which is to renew the retroreflective sheeting after 10 years, regardless its condition. The proposed title would indicate two options for replacing the retroreflective sheeting: the same 10-year replacement cycle; or using a performance-based method to determine when replacement is required.

In paragraph (a), FRA proposes to identify two options for replacing retroreflective sheeting: a 10-year replacement cycle; and an alternative method to determine when replacement is required. FRA proposes to include the existing 10-year replacement option in paragraph (b) and the alternative option in paragraph (c).

FRA proposes to retain the 10-year replacement option in paragraph (b), because some short line railroads or individual car owners may not want to invest in the equipment and training needed to switch to an alternative method. As discussed above, it is not clear if, or how, railroads are able to distinguish between replacement sheeting and previously installed sheeting on the same piece of equipment. According to AAR, UMLER system updates have been inconsistent, because the railroad industry no longer relies on the information provided by the UMLER fields. FRA requests comment from the railroad industry on how records are created and maintained to track the installation date of sheeting when only a portion of the required sheeting is replaced prior to 10-years from the date of original installation.

Proposed paragraph (c) would require railroads to evaluate retroreflective sheeting during the SCABT and annual locomotive inspection. Proposed paragraph (c)(1) provides the specifications for an acceptable comparator panel to carry out the evaluation. Proposed paragraph (c)(2) sets forth the process and criteria for evaluating the existing sheeting using a comparator panel under paragraph (c)(1). Proposed paragraph (c)(3) permits the use of a handheld retroreflectometer to perform the required evaluation. As part of FRA's routine compliance oversight, the agency expects to review railroads' inspection records to verify an alternative evaluation was conducted.

As proposed, the retroreflectivity, color, and construction requirements in paragraph (c)(1)(i) through (iii) are the same as the current S–916. The proposed labeling requirement in subparagraph (c)(1)(iv) is also the same as the current S–916, with the additional requirement that a panel's label include information on the calibration status of the panel. Since AAR indicated that the median time between SCABT is 25.6 months, FRA proposes to have the comparator panels recalibrated at least every two years (*i.e.,* no more than two years from its manufactured date or previous recalibration date, whichever is most recent). FRA seeks comment on this proposed timeframe and how much downtime is expected while a panel is out for recalibration.

Proposed paragraph (c)(2) would establish the same comparator panel evaluation process and criteria as the current M–944. M–944 recommends evaluating installed sheeting with a comparator panel from 15 feet. FRA understands that 15 feet provides an appropriate amount of space to perform the evaluation, but also understands that during a SCABT or locomotive annual inspection it may not be practicable for an inspector to stand 15 feet from the equipment. To provide some flexibility, proposed paragraph (c)(2)(iv) would require sheeting to be evaluated from a distance of between 10 and 20 feet, with a 15-foot distance being preferable. FRA seeks comments on whether a range of 10 to 20 feet is sufficient to properly evaluate retroreflective sheeting and whether the proposed range provides sufficient flexibility.

Consistent with M–944, proposed paragraph (c)(2)(v) sets forth the process for conducting the evaluation (*e.g.,* with light source positioned adjacent to the

[33] Docket FRA–2010–0171, Document No. 9.

[34] Docket FRA–2012–0024, Document No. 4.

inspector's eye and directed at the sheeting and comparator panel, the inspector compares the reflected light intensity of the entire installed sheeting to that of the comparator panel). Proposed paragraph (c)(2)(v)(A) provides that if the perceived reflected light intensity of the entire installed sheeting appears brighter than that of the comparator panel, the installed sheeting passes the evaluation. Proposed paragraph (c)(2)(v)(B) provides that if the perceived reflected light intensity of the entire installed sheeting does not appear brighter than the comparator panel or if the two are indistinguishable, the installed sheeting, does not pass the evaluation. If the two are indistinguishable, the installed sheeting is already at or near the minimum threshold to comply with this section and would only continue to degrade below the threshold if allowed to continue in service until the next evaluation required by this section. Therefore, as proposed, FRA would require such sheeting to be replaced.

In paragraph (c)(3), FRA proposes to allow the use of handheld reflectometers to evaluate retroreflective sheeting and determine when it is required to be replaced under this part. FRA understands that reflectometers can be used to evaluate retroreflective sheeting easily, reliably, and accurately. Proposed paragraph (c)(3) would require use of an annular reflectometer, placed directly against the retroreflective sheeting. FRA is requiring an annular device, if a reflectometer is used, because it is easier to ensure an accurate evaluation compared to other types of devices that require multiple measurements from different angles to properly evaluate the sheeting. Proposed paragraph (c)(3)(iii) sets forth the minimum allowable retroreflective values and necessary measurement angles if a reflectometer is used. Due to the current high cost of a handheld reflectometer, FRA does not anticipate widespread use of reflectometers initially. However, if the cost diminishes overtime, railroads may prefer it.

V. Regulatory Impact and Notices

A. Executive Order 12866

The proposed rule is a nonsignificant regulatory action under Executive Order 12866, ''Regulatory Planning and Review.'' FRA made this determination as the economic effects of the proposed rulemaking would not exceed the $100 million annual threshold defined by Executive Order 12866. FRA estimates this proposed rule would result in benefits over a 20-year period from not replacing retroreflective sheeting prior to the end of its useful life, while potentially improving safety by replacing in less than 10 years sheeting that has already reached the end of its useful life.

1. Need for Regulatory Action

The Reflectorization Standards were promulgated in 2005; in the over-15 years since their publication, FRA has learned that the reflective sheeting applied to rail freight rolling stock can remain effective beyond the 10 years initially thought at the time the Reflectorization Standards were developed. This rulemaking updates the Reflectorization Standards in light of this new information by allowing the use of an alternative method to evaluate retroreflective sheeting. The alternative method, currently implemented by using a comparator panel (under waiver), allows railroads and private car owners to replace retroreflective sheeting as needed, based on performance, instead of a mandatory replacement based on length of time. The proposed rule also recognizes a segment of the regulated entities that operate THEERP freight rolling stock and extends the exclusion from the Reflectorization Standards to THEERP operations, as they pose a low risk of highway-rail grade crossing incidents. For both stakeholders that choose to use the comparator panel, and those that operate THEERP freight rolling stock, the proposed rule promotes regulatory certainty and efficiency. Unnecessary paperwork burdens would also be reduced by no longer needing to periodically file waivers with FRA for relief from their respective sections of part 224.

The proposed rulemaking amends part 224 in two substantive ways. First, the proposed rule codifies waivers excepting THEERP operations from reflectivity standards in § 224.3. Second, the proposed rule codifies the AAR waiver allowing railroads to use an alternative method (*i.e.,* the comparator panel) for determining when retroreflective sheeting needs replacement. The comparator panel would be added as an option to the existing 10-year replacement cycle under § 224.111.

2. Baseline

The typical baseline scenario from which benefits and costs of the regulation are measured is the no-action baseline, which is an assessment of the railroad world without the proposed rule.[35] Without the NPRM, it is likely that the railroads will continue to file waivers and waiver renewals for using the alternative method and exclusion of THEERP freight rolling stock from the Reflectorization Standards. One possible baseline would assume FRA approves most of these waivers with conditions, as it has in the past. In comparing this baseline to the NPRM, the benefit from the NPRM would be the removal of unnecessary paperwork burdens of having to file future waivers and renewals with FRA.

However, another baseline might offer more information about the impacts of the proposed rule. The waiver to use the comparator panel is relatively recent (2018), and many of the THEERP waivers are also less than 10 years old. The comparator-panel waiver covers almost all the rail freight rolling stock. Another baseline would describe a scenario absent the comparator-panel waiver, that is, in which approval of the waiver is uncertain and reflective sheeting is replaced per the 10-year renewal cycle in existing § 224.111. FRA proposes to use this baseline to better estimate the substantive impacts of the NPRM. The baseline is accounted for as a separate alternative under the Costs section below. FRA invites comment on the appropriate baseline to use for the regulatory analysis.

3. Costs

a. Methodology

Since the retroreflective sheeting is applied per rail car, this analysis used the per-car cost as the basis to estimate much of the costs related to retroreflective sheeting. The costs for preparing waiver petitions were estimated based on the labor costs of those employees preparing the waivers.

FRA requested data from AAR about the railroads' experiences under the approved waiver using the comparator panel. FRA reviewed the data supplied by AAR and incorporated it into the cost estimates below. AAR provided data for before and after the comparator panel waiver.[36]

In its estimates, AAR used an average labor rate of $140.38 per hour or $2.34 per minute, in 2020 dollars, which may be based on interchange billing rates. For its regulatory analyses, however, FRA uses standardized labor rates which the Class I railroads report to the Surface Transportation Board (STB).

[35] Office of Management and Budget (OMB), *Circular A–4: Regulatory Analysis* (Sept. 17, 2003). Available: *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

[36] Association of American Railroads (AAR), *FRA Data Request for Docket FRA–2015–0105* (Nov. 3, 2020).

These rates are burdened by 75 percent for any fringe benefits. (The Class I railroads report service hours and compensation to STB under 49 CFR 1245.2.) For this analysis FRA used the STB wage rates for the relevant employee groups. These are STB Group 200 employees consisting of Executives, Officials, & Staff Assistants who likely complete waiver petitions for the railroads, and Group 400 Maintenance of Equipment & Stores employees who inspect and apply the reflective sheeting. The Executives, Officials, & Staff Assistants burdened rate is $77.44 per hour or $1.29 per minute, and the Maintenance of Equipment & Stores employees burdened rate is $59.89 per hour or $1.00 per minute (in 2020 dollars).[37]

To estimate Government costs and benefits resulting from reviewing and approving waivers, FRA used the General Schedule (GS) pay rates for grade GS–14 step 5 employees in the Washington, DC area. The Federal pay rate was also burdened by 75 percent yielding a Federal pay rate of $115.29 per hour.[38]

AAR provided counts of the maintenance of way (MOW) cars and locomotives that would be covered under part 224; however, FRA focused on freight rail cars to simplify the analysis. Given that MOW cars and locomotives represent a small portion of all freight rail cars (about 2.5 percent and 1.6 percent respectively), including them in the analysis would not significantly affect the results.

FRA used a 20-year period of analysis for this rulemaking because retroreflective sheeting appears to have an effective service life beyond 10 years (based on data from the AAR comparator panel waiver). FRA also identified one study that estimated prismatic sheeting used on traffic signs may last 15 to 30 years, which may be a reasonable proxy for similar sheeting used on rail cars.[39] However, for the rail freight rolling stock used in THEERP operations, a 10-year period of analysis may be a better ''fit'' because overage equipment may only be actively used for an additional 5 to 10 years. Since the provision permitting use of the comparator panel covers most of the rail car fleet, FRA chose to use a 20-year period of analysis.

First, the baseline scenario costs were determined, followed by the NPRM costs. The difference between the two costs represents the estimated net benefits (or costs) of the NPRM: *Baseline costs − NPRM costs = Net benefits (or costs).*

The costs and benefits associated with the NPRM are summarized in Table V–1 below.

TABLE V–1—SUMMARY OF TOTAL BENEFITS OVER THE 20-YEAR PERIOD

[2020 Dollars]

Impact	Undiscounted	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Baseline Cost	$540,747,953	$286,435,001	$402,248,463	$27,037,438	$27,037,415
NPRM Cost	436,091,940	231,038,590	324,420,840	21,808,408	21,806,176
Net Benefits	104,656,013	55,396,411	77,827,623	5,229,029	5,231,239
Government Costs for Waivers (Baseline)	167,171	89,183	124,739	8,418	8,384

Qualitative Benefit: Reduced environmental waste from not replacing effective reflective sheeting prematurely.

The impacts are described in detail below.

b. Baseline Costs

Absent this NPRM, both THEERP operations and other railroads to which the Reflectorization Standards apply will incur costs for the following requirements:

- Cost for inspection and replacement of missing, damaged, or obscured retroreflective sheeting (''sheeting'') under § 224.109.
- Cost to renew, *i.e.,* replace sheeting no later than 10 years after installation under § 224.111. The baseline assumes sheeting will be replaced periodically every 10 years.
- Incidental cost for transporting rail cars that would not typically appear on a repair track or shop for a SCABT to renew sheeting under § 224.111.
- Cost of petitioning FRA for waivers from the Reflectorization Standards.

These cost elements may be represented by the equation: *Baseline cost = Visual inspection & sheeting replacement + 10-year renewal + Transport + Waiver.*

The cost for inspection and replacement of missing, damaged, or obscured sheeting was determined by the cost of a visual inspection and sheeting replacement multiplied by the number of cars undergoing a SCABT. The SCABT serves as the triggering event for the inspection and replacement of sheeting under § 224.109. To determine the number of cars undergoing a SCABT per month, FRA used the median time between SCABTs of 25.6 months, and the average annual number of freight cars of 1,658,334 (an average over the recent period 2016–2020). The cars per month were multiplied by 12 months to yield an estimated 765,385 cars per year undergoing a SCABT.[40]

Further, the cost of the visual inspection and sheeting replacement was determined by the sum of the cost of the visual inspection and cost to replace missing, damaged, or obscured sheeting. AAR indicated the time for a visual inspection was 0.83 minutes, the time to replace the first sheet per side was 9.3 minutes, the average number of sheets replaced during SCABTs was 0.71 sheets, and the cost per sheet was $1.31. Accounting for the labor time using the STB Maintenance of Equipment & Stores wage rate of $1.00 per minute results in a per-car cost of $11.00. Then the cost under § 224.109 was calculated by multiplying the estimated cars undergoing a SCABT by

[37] Surface Transportation Board (STB), *Quarterly Wage A&B Data* (2020). Annual composite for All Railroads. Available: *https://www.stb.gov/reports-data/economic-data/quarterly-wage-ab-data/.* Calculations: For Group 200 employees, $44.25 per hour STB average straight time rate × 1.75 fringe benefit multiplier = $77.44 per hour burdened wage rate. Similarly, for Group 400 employees, $34.22 × 1.75 = $59.89 per hour burdened wage rate.

[38] Office of Personnel Management (OPM), *Salary Table 2020–DCB* (Jan. 2020). Available: *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/DCB_h.pdf.* Calculation: $65.88 per hour GS–14 Step 5 rate × 1.75 fringe benefit multiplier = $115.29 per hour burdened rate.

[39] Preston, Howard, *Traffic Sign Life Expectancy* (St. Paul, MN: 2014). Report No. MN/RC 2014–20. Minnesota Dept. of Transportation. Available: *https://www.lrrb.org/pdf/201420.pdf.*

[40] Calculation: 1,658,334 fleet size/26 months = 63,782 SCABT cars per month. Then 63,782 cars per month × 12 months = 765,385 cars per year that undergo a SCABT, or about 46% of the fleet. Source: *FRA Data Request,* 2020.

the cost per car, resulting in a cost of $8,423,025 per year.[41]

Similarly, the cost to renew the sheeting after 10 years was determined by the number of cars affected multiplied by the cost of renewal. The average number of cars that would need full renewal was 154,800 per year based on the average over the years 2016 to 2020 (*FRA Data Request,* 2020). That represents about 10 percent of the fleet per year, which is expected given the 10-year renewal period. The cost for sheeting material per car was estimated given 14 sheets (of 0.5 square-foot each) would be needed for 2 sides of the rail car (less than 50-foot car, 7 sheets per side), for a cost of $18.34 per car. AAR provided that the time to apply the sheeting was 9.3 minutes for the first sheet per side, and 2.6 minutes for each additional sheet, totaling almost 50 minutes for both sides of a rail car and $50 in labor costs (using the STB Maintenance of Equipment & Stores wage rate of $1.00 per minute). The cost per car for sheeting renewal is the sum of the material cost and labor application costs ($18.34 + $49.87 = $68.21 per car). Then the renewal cost for all affected cars is $10,558,758 annually.[42]

In order to model the impacts more accurately under the baseline, FRA estimated the potential costs for transporting rail cars, that in their normal operations, would not appear on a repair track or shop (for a SCABT). These cars may be owned by private car owners that do not own repair shops, MOW cars that are not regularly interchanged, older cars that are not regularly interchanged, stored cars, and seasonally used cars. These cars may incur additional expense for transportation to a repair shop when their sheeting needs renewal after 10 years. However, this situation is mitigated by mobile repair units or a railroad's Running Repair Agent (RRA) that can perform SCABTs and replace sheeting.[43] Nevertheless, FRA accounted for the transportation costs for some cars that may need to be moved for sheeting replacement because of scheduling issues with mobile repair agents or operational issues. As a proxy estimate for the number of cars requiring transport, FRA used the 23,000 freight cars that have interchange restrictions as reported by AAR; these cars are usually older cars.[44] Another way to estimate the number of affected cars is to consider the conditional probability of not undergoing a SCABT on a repair track or shop and cars that would need full sheeting renewal. The probability of not undergoing a SCABT was found by dividing the number of cars undergoing a SCABT by the average fleet size, then subtracting from 1, for a result of 0.54 or about 50 percent.[45] From the discussion above, the probability of renewal for a car is about 10 percent or 0.1. The conditional probability is the product of the two probabilities, equaling about 0.05 or 5 percent of the fleet, and representing 89,295 rail cars. Qualitatively, the majority of these cars can be serviced by mobile repair agents and RRAs, and FRA used 23,000 cars as a reasonable estimate.

For the transportation cost per car, FRA estimated the expected transportation cost as the probability that a car would need transportation for sheeting renewal multiplied by its transportation cost. FRA estimated a range of $3,000 for $4,000 to transport an empty car, or an average cost of $3,500 per car; the expected cost in any one year is $350.[46] Then, the transportation cost for the rail car fleet is the estimated 23,000 affected cars multiplied by the expected transportation cost of $350, for an overall transportation cost of $8,050,000 annually. Given the uncertainty about the number of cars affected, there is a higher degree of uncertainty about this cost estimate and FRA invites comment on the inputs used.

The last cost element in the baseline scenario is the cost of petitioning FRA for waivers from the Reflectorization Standards. When approved, waivers generally provide regulatory relief for five years. For this analysis, FRA distinguished between waiver extensions and waiver renewals. Waivers extensions permit the railroad or individual car owners to continue to operate under the original waiver for another five years, and do not require preparation of a **Federal Register** notice. After 10 years, the railroad or individual car owner can no longer apply for an extension, but must instead request a renewal of the waiver. The renewal requires more administrative tasks including a **Federal Register** notice. The baseline waiver cost is the estimated number of new waivers plus waiver extensions and renewals, multiplied by the cost of filing waivers. This analysis estimated the waiver costs for both THEERP operations and the performance-based (*i.e.,* comparator-panel) waiver.

In the case of waivers for THEERP operations, FRA has received and reviewed 22 waivers over 16 years, for a rate of 1.375 new waivers per year, which is rounded to 1.5 waivers for analysis. Therefore, over the 20-year period of analysis (years 2022 to 2041), FRA expects 30 new waiver petitions. Based on historical experience and FRA subject matter expert estimates, FRA has found that waiver extensions and renewals are subject to the following three conditions:

- Railroads or individual car owners will likely not operate overage equipment beyond 10 years.
- Railroads or individual car owners have not asked for renewals of waivers beyond 10 years.
- FRA has approved 14 out of 22 waivers for an approval rate of 64 percent (*i.e.,* 64 percent of 1.5 new waivers is about 1 new waiver per year). Moreover, there were 7 dismissed or denied waivers, and 1 double-counted waiver to complete the set of 22 THEERP waivers).

Applying these conditions to the number of new waivers, FRA estimated 15 waiver extensions over the period of analysis. As explanation, new waivers approved during years 1 through 5 of the period of analysis (from calendar years 2022 through 2026) will likely receive extensions during years 6 through 10 of the period of analysis (from calendar years 2027 through 2031) respectively, resulting in 5 extensions. (After 10 years, requests for waivers renewals are not likely under the first two conditions above.) Similarly, new waivers approved during years 6 through 10 of the analysis will likely receive extensions during years 11 through 15 of the analysis (from 2032 through 2036) respectively, resulting in an additional 5 extensions. Finally, new waivers approved during years 11 through 15 of the analysis will likely receive extensions during years 16 through 20 of the analysis (from 2037 through 2041) respectively, resulting in 5 more extensions. In total, FRA expects 15 waiver extensions.

Also, THEERP operations that currently have waivers may request

[41] Calculations: Per-car cost for visual inspection and sheet replacement = 0.83 min. × $1 per min. visual inspection + 9.3 min. × $1 per min. sheeting replacement + 0.71 sheets × $1.31 per sheet = $11.00. Total cost for visual inspection and sheeting replacement = 765,385 cars × $11 per car = $8,423,025 per year.

[42] Calculation: Cost to renew sheeting after 10 years = 154,800 cars × $68.21 per car = $10,558,758 per year on average.

[43] Railinc, *Running Repair Agents—Active.* Available: *https://findusrail.railinc.com/#/home.*

[44] AAR, *Railroad Facts: 2020 Edition* (Washington: 2020) 53.

[45] Calculation: 1 − 765,385 SCABT cars/1,658,334 average fleet size = 1 − 0.46 = 0.54, or about 50 percent of cars not likely to appear on a repair track or shop for a SCABT.

[46] Calculation: Expected (transportation cost per car) = probability (car would need 10-year sheeting renewal) × transportation cost = 0.1 × $3,500 = $350.)

extensions resulting in an additional 6 waiver extensions. Of the 14 approved THEERP waivers, 4 did not request a waiver renewal and expired before year 2022 (waivers FRA–2010–0148, 2010–0156, 2008–0021, and 2014–0082). Of the remaining 10 approved THEERP waivers, 1 is due for an extension in year 1 of the analysis, *i.e.,* calendar year 2022 (waiver FRA–2016–0110—approved in 2017). Four approved waivers are due for extensions in year 3 of the analysis, *i.e.,* year 2024 (waivers FRA–2018–0026, 2018–0086, 2019–0008, 2019–0047—all approved in 2019). Finally, 1 approved waiver is due for an extension in year 4 of the analysis, *i.e.,* year 2025 (waiver FRA–2020–0046—approved in 2020). In sum, FRA expects 6 waiver extensions. Four of the 10 approved waivers may request waiver renewals during the period of analysis but are unlikely to do so based on the above conditions.

Thus, FRA expects THEERP operations to file 30 new waivers, 15 extensions of these new waivers, and 6 extensions of existing waivers. FRA estimated each new THEERP waiver petition requires 40 hours of labor, and each extension requires 8 hours of labor. Accounting for these labor hours at the STB Executives, Officials, & Staff Assistants burdened wage rate yields a new waiver cost of $3,097.50 per waiver, and a corresponding cost of $4,646 for 1.5 new waivers per year.[47] The cost for a waiver extension is $619.50 per extension. The costs are scheduled according to the frequency of occurrence of new THEERP waivers (1.5 per year), new THEERP waiver extensions (1 per year starting in year 6 of the analysis), and currently-approved THEERP waiver extensions (1 in year 1 of the analysis, 4 in year 4, and 1 in year 5). The cost schedule also accounts for extensions and renewals of the performance-based waiver at $1,587 per extension or renewal (see below, 1 extension expected in year 2 of the analysis, and thereafter 1 renewal per each year in years 7, 12, and 17). As an example, in year 2 of the analysis, FRA expects 1.5 new THEERP waivers ($4,646), and 1 alternative waiver extension ($1,587), for a total estimated cost of $6,234.

For regulated entities petitioning to use alternative methods to evaluate sheeting, FRA is not aware of any new methods in development and expects no new waiver filings. If a new performance-based waiver was filed, the cost to file such a waiver would be qualitatively high because it would likely involve extensive development and in-service testing like the comparator panel. Given the research to develop the comparator panel, FRA expects AAR will continue to file for extensions and renewals to extend the waiver's relief. Over the period of analysis, FRA estimated 4 extensions and renewals, requiring 20.5 hours each at the same Executives, Officials, & Staff Assistants wage rate for a per-waiver cost of $1,587.47. FRA estimated the performance-based waiver extension requires more labor time than the THEERP-operations waiver extension because Class I railroads' operations are more complex. (A THEERP-operations waiver renewal, however, may involve detailed descriptions of the subject equipment that may add to the time to file a potential renewal.)

Furthermore, the Federal Government expends resources to review these waiver petitions. Depending on the waiver, FRA's review will involve legal personnel, subject matter experts, administrative personnel, and railroad inspectors. FRA estimated these costs using the same respective labor hours as for THEERP-operations waivers and performance-based waivers above. For the wage rate, instead of using an average wage rate for the variety of personnel involved, FRA used a representative wage rate for GS–14 step 5 employees of $115.29 per hour. The resulting FRA costs are $4,611.60 for a new THEERP-operations waiver, $922.32 for a THEERP-operations waiver extension, and $2,363.45 for the comparator-panel wavier extension and renewal.

The following table presents the estimated baseline scenario cost elements. The Government costs are not included in the total baseline cost.

TABLE V–2—BASELINE SCENARIO COSTS

[2020 Dollars]

Baseline cost impact	Undiscounted	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Visual Inspection & Replacement (§ 224.109)	$168,460,499	$89,233,646	$125,313,342	$8,423,025	$8,423,025
10-Year Renewal (§ 224.111)	211,175,170	111,859,638	157,087,664	10,558,758	10,558,758
Transportation for Non-SCABT Cars	161,000,000	85,281,815	119,763,673	8,050,000	8,050,000
Waivers	112,284	59,902	83,784	5,654	5,632
Total Baseline	540,747,953	286,435,001	402,248,463	27,037,438	27,037,415
Government Costs for Waivers	167,171	89,183	124,739	8,418	8,418

c. NPRM Costs

The first substantive change under the NPRM would add freight rolling stock used for THEERP operations to the list of excepted equipment under § 224.3. These operations would no longer need to file waivers and waiver extensions with FRA and thus save the associated paperwork costs. The benefits would equal the baseline costs for waivers (when taken together with the similar type of benefits from codifying the comparator panel waiver).

The largest change under the NPRM would be evaluating rail cars with a comparator panel instead of replacing sheeting under the 10-year renewal cycle. THEERP operations and other railroads to which the Reflectorization Standards apply will incur costs for the following requirements:

- Cost for inspection and replacement of missing, damaged, or obscured retroreflective sheeting under § 224.109. This requirement is unchanged from the baseline except for removing old implementation dates.
- Cost to evaluate and replace sheeting under § 224.111. The NPRM retains the option to use the 10-year replacement cycle.
- Incidental cost for transporting rail cars that would not typically appear on a repair track or shop for a SCABT to renew sheeting under § 224.111. This

[47] Calculation: Cost for 1 waiver = 40 hrs. × $77.44 = $3,097.50. Then 1.5 new waivers × $3,097.50 per waiver = $4,646.

cost occurs under the baseline too but is adjusted for relief from the 10-year replacement cycle, and longer expected sheeting life.

- Small entities that may use the 10-year replacement cycle option under § 224.111 (estimated at 15 percent of small entities).
- Cost of the comparator panel.
- Cost to recalibrate the comparator panel under § 224.111.
- Employee training to use the comparator panel as described in AAR Field Manual Rule 66. (The comparator panel inspection of reflective sheeting will become part of the SCABT and annual locomotive inspection.)

These cost elements may be represented by the equation: NPRM *Cost = Visual inspection & sheeting replacement + Periodic evaluation & sheeting replacement + Transport + 10-year renewal option estimated for small entities + Comparator panel + Comparator panel recalibration + Employee training.*

The cost for visual inspection and replacement of missing, damaged, or obscured sheeting remained the same as under the baseline scenario because FRA is only removing the references to the outdated implementation schedule. The substantive requirements remain the same.

The primary change under the NPRM would be evaluating the sheeting on rail cars with a comparator panel. The cost of using the comparator panels is determined by the number of cars undergoing a SCABT and evaluated with the comparator panel multiplied by the material and labor costs per car. Based on data supplied by AAR, FRA estimated 571,750 cars will evaluated, a preliminary inspection will require 2.8 minutes, cleaning will take 3.3 minutes, and the time to apply 1 sheet will require 9.3 minutes. AAR also found an average of 0.72 sheets renewed during their waiver at a cost of $1.31 per sheet. FRA applied the STB Group 400 Maintenance of Equipment and Stores employee wage rate to estimate a cost per car of $16.21, and $9,270,752 per year for the affected cars. (In contrast, the estimated cost per car for sheeting renewal under the baseline scenario was $68.21 per car.) [48]

The NPRM also allows use of a handheld retroreflectometer to directly evaluate the performance of sheeting. The retroreflectometer may be easier to use than the comparator panel, but given its current high cost ($10,000), its use will likely be minimal at this time.

As in the baseline scenario, some rail cars may incur a transportation cost to renew sheeting because they may not periodically undergo a SCABT at a repair shop or track, or receive service from a mobile service agent. However, given the experience under the AAR comparator panel waiver showing reflective sheeting can likely remain effective beyond 10 years, these cars would need to be transported less frequently. These cars would no longer be subject to the 10-year renewal cycle. FRA used the estimates from Preston (2014) of an average reflector service life of about 20 years to calculate the reduced impact of cars needing transport for reflective sheeting replacement under the NPRM. Using a 20-year service life reduced the probability that cars would need transport by half to 5 percent, and the resulting expected cost per car from $350 to $175. Given the same number of cars needing transport as under the baseline scenario (23,000 cars), yielded a transportation cost of $4,025,000 per year.

The NPRM contains an option for railroad car owners to continue using a 10-year replacement cycle for sheeting. FRA assumes that a portion of small entities will be most likely to choose this option to reduce their investment in the comparator panel and associated costs to implement it (such as training employees). Based on feedback from the American Short Line and Regional Railroad Association (ASLRRA), FRA understands most short line railroads are in fact using the comparator panel. However, for operations that find using the comparator panel costly, FRA estimated 15 percent of small entities will use the 10-year replacement option. To count the number of rail cars owned by small entities, FRA subtracted Class I railroad owned cars in North America, Class II railroad owned cars, and privately-owned cars from all freight cars—to estimate Class III railroads own 54,766 rail cars on average (over the years 2016 to 2020). Thus, 15 percent of these Class III railroad cars is 8,215 cars. FRA used AAR *Railroad Facts* books and Progressive Railroading magazine ''Fleet Stats'' for various years to determine car ownership.[49] Using the same percent of cars that would need full renewal under the baseline scenario of 10 percent means about 821 cars per year would need sheeting renewal. FRA applied the same cost per car for 10-year sheeting replacement as under the baseline scenario ($68.21 per car) and estimated a cost of $56,033 per year under the NPRM.

To estimate the number of comparator panels that may be purchased, FRA used the difference between the average number of shops and locations qualified to perform a SCABT and evaluate sheeting using a comparator panel, before and after the comparator panel waiver. AAR estimated an average of 1,570 shops and locations qualified for SCABTs before the waiver, and 1,063 shops and locations equipped with a comparator panel after the waiver; the difference of about 500 shops and locations represents the shops and locations that may purchase a comparator panel. AAR notes its estimates include shops and locations that performed five or more SCABT tests, so the actual counts may be higher. In addition, FRA internally estimated 300 shops and locations may need to purchase a comparator panel. FRA used an average of the two estimates for analysis, or 400 shops and locations. FRA assumed 1 comparator panel purchased per shop or location, and applied the $190 cost per panel to estimate a marginal cost of $76,000 for acquiring comparator panels. Furthermore, AAR offers these comparator panels may need replacement every 4 years (years 1, 5, 9, 13, and 17 of the 20-year period of analysis).

These comparator panels are also required to be periodically recalibrated (not later than 2 years) so that an accurate number of retroreflective sheets are replaced on rail cars. Given the 4-year average life of a comparator panel, a comparator panel will be typically recalibrated 1 time during its useful life. For example, if a comparator panel is purchased in year 1 of the period of analysis, it would be recalibrated in year 3, and a new comparator panel purchased in year 5. Over the period of analysis, recalibration would occur in in years 3, 7, 11, 15, and 19. Additionally, AAR estimated a recalibration cost of $80 per panel with a discount if multiple panels are recalibrated per shop. As FRA does not know how many shops own multiple comparator panels, the cost of recalibrating one panel was used to estimate a cost of $32,000 for recalibrating 400 comparator panels.

[48] Calculation: Material cost per car = 0.72 sheets × $1.31 per sheet = $0.95. Labor cost per car = (2.8 min. inspection + 3.3 min. cleaning + 9.3 min. first sheet application) × $1 per min. = $15.27. Material and labor costs per car = $0.95 + $15.27 = $16.21. Cost for evaluated cars = 571,750 cars × $16.21 per car = $9,270,750.

[49] AAR, *Railroad Facts* (Washington: multiple editions 2017–2020) 65–80. Foran, Pat, & Stagl, Jeff, eds., ''Fleet Stats,'' *Progressive Railroading* (multiple editions 2016–2019, and 2021). Year 2020 not available, 2019 Railroad Car Owners data carried over to 2020. Available: *https://www.progressiverailroading.com/keywords/keywords.aspx?id=0&keywords=Fleet+Stats&year=2017.* (May require log-in for some years.)

Employees inspecting and replacing reflective material likely would need training and instruction in these procedures. Rule 66, Reflective Sheeting, of the AAR Field Manual contains instructions for inspecting sheeting using the comparator panels. A manufacturer of comparator panels also provides step-by-step instructions on its website.[50] FRA assumed these comparator panel instructions will be combined with existing training sessions on performing SCABTs and locomotive inspections. FRA estimated a marginal training cost using the same amount of time estimated to inspect reflective sheeting using a comparator panel of 2.8 minutes, applied to 20,253 STB Group 400 Maintenance of Equipment and Stores employees at their wage rate, to calculate a training cost of $55,739. Only the first year of training is considered because the cost of subsequent training is covered under the training rule, 49 CFR part 243.[51]

The following table presents the estimated NPRM cost elements.

TABLE V–3—NPRM COSTS

[2020 Dollars]

NPRM cost impact	Undiscounted	Present value 7%	Present Value 3%	Annualized 7%	Annualized 3%
Visual Inspection & Replacement (§ 224.109)	$168,460,499	$89,233,646	$125,313,342	$8,423,025	$8,423,025
Periodic Evaluation & Sheeting Replacement (§ 224.111)	185,415,041	98,214,480	137,925,381	9,270,752	9,270,752
Transportation for Non-SCABT Cars	80,500,000	42,640,907	59,881,836	4,025,000	4,025,000
10-Year Renewal Option est. for Small Entities	1,120,661	593,615	833,630	56,033	56,033
Comparator Panel	380,000	221,151	295,326	20,969	19,851
Comparator Panel Recalibration	160,000	81,699	117,210	7,712	7,878
Employee Training	55,739	52,092	54,115	4,917	3,637
Total NPRM	436,091,940	231,038,590	324,420,840	21,808,408	21,806,176

4. Alternatives

FRA considered a few regulatory alternatives before deciding to offer stakeholders the option of using either the 10-year replacement cycle or the alternative method (comparator panels) as proposed. As a presumably lower-cost alternative, FRA considered eliminating the 10-year replacement cycle completely given that most of the industry is using the comparator panel waiver. However, FRA assessed that some entities might incur higher costs for evaluating sheeting on MOW cars and other privately-owned cars using the comparator panel because these cars may not appear at a repair shop or on a repair track regularly for a SCABT. Some smaller entities with fewer cars may also find it easier to replace the retroreflective sheeting on their cars every 10 years. A pre-determined schedule for replacing sheeting provides regulatory simplicity for these entities and may be easier to implement than a comparator panel-based standard. Overall, including both alternatives as proposed increases regulatory flexibility for railroads and car owners.

FRA also considered stricter alternatives that would help FRA enforce the Reflectorization Standards. For example, FRA could mandate railroads and private-car owners record and report when retroreflective sheeting is changed. FRA could also require the industry to report which standard for evaluation and replacement they are following (*i.e.,* either the alternative replacement or the 10-year replacement cycle). As noted in the Overview section above, under the approved waiver for using the comparator panel, the industry has not been consistently recording in UMLER when and why sheeting is replaced. That makes it difficult to determine how much of the sheeting was replaced because of damage, and how much because of the passage of time. Given the size of the fleet and frequency of SCABTs, the record-keeping and reporting costs could be somewhat significant. Railroads would need to record and report information that is not currently required, including when the sheeting is replaced, why it is replaced (obscured, damaged, or missing), and how much of the rail car sheeting was replaced. FRA estimates this would cost at least $167,000 annually.[52] In return, better records could facilitate FRA enforcement, for example, to check if the overall rate of sheeting replacement under the NPRM is in-line with expectations for the service life of sheeting in various operations and environments. As proposed, enforcement will generally rely on FRA inspectors visually inspecting sheeting and SCABT data, which, given the low accident risk under the waivers historically, would provide a less costly alternative to requiring more record-keeping and reporting. For example, if an inspector observes sheeting to be in poor condition, and requests records from the railroad that list a recent SCABT, it would provide an indication the sheeting may not have been replaced when required.

5. Sensitivity Analysis

The cost and benefit estimates could change if the analysis's underlying assumptions or inputs were to change. The largest categories of costs presented in Table V–3 are the pre-existing requirement to visually inspect and replace sheeting (§ 224.109), periodically evaluate and replace sheeting (§ 224.111), and transport cars that would not typically appear on a repair track or shop for a SCABT. The costs to visually inspect and replace sheeting, and to periodically evaluate and replace sheeting, depend primarily on the number of cars. The number of cars is about 750,000 and 500,000 respectively for these cost estimates. If the number of cars used in calculating these estimates were to increase, then the estimated net business benefits would increase too. The number of active freight cars may increase if economic growth continues in the short run, likely increasing the demand for freight transportation. FRA used an

[50] Avery Dennison, available: *RR-Comparison-Panel-Kit_Overview.pdf (averydennison.com).*

[51] Calculation: 2.8 min. marginal training time × $1 per min. × 20,253 employees = $55,739.

[52] The Paperwork Reduction Act (PRA) analysis for this proposal estimates a cost of $167,000 for recording and reporting obscured, damaged, or missing sheeting under § 224.109. This analysis assumes the stricter alternative would require railroads to record and report additional data. As an approximation, the additional burden is another 5 minutes, or $167,000 annually. Also, Railinc would incur a cost for programming changes to the UMLER database to accommodate the new data fields. FRA inspectors would also spend more time reviewing these more detailed records.

average of recent freight cars counts (2016–2020) as a reasonable estimate in its cost estimates.

Furthermore, for the cost to periodically evaluate and replace sheeting, if the cost for purchasing a retroreflectometer decreases over time, or a cheaper substitute method of directly measuring the reflectivity becomes available, the labor time to evaluate the sheeting on a car will decrease. The benefits from using an alternative method will then increase as well.

For the transportation cost, the cost per car is a significant factor. FRA applied the probability of sheeting renewal to estimate this cost. As the actual service life of sheeting in different railroad operations and environments becomes better known, the need to transport cars to replace sheeting may further decrease, reducing this cost. Additionally, as mentioned, FRA used a proxy to estimate the number of cars that may need transportation, which is a source of uncertainty in the estimate, but conceptually represents the type of cars that may need transportation.

FRA also used STB wage rates in its estimates, based on the Class I railroads' reports to the STB. Using AAR wage rates will affect the scale of costs, but not the resources used in terms of capital (*i.e.,* the number of cars and comparator panels), and labor time used to comply with the regulation.

6. Conclusion

As shown in Table V–1 above, FRA estimates the NPRM results in net benefits with a present value of $55 million using a 7 percent discount rate and $78 million using a 3 percent discount rate (over a 20-year period of analysis in 2020 dollars). In annualized terms, the net benefits are $5 million per year using a 7 percent discount rate, and a similar $5 million using a 3 percent discount rate. In addition, the Federal Government would save the cost of reviewing and analyzing waivers of about $89,183 (present value, 7 percent discount rate); $124,739 (present value, 3 percent discount rate), or $8,418 (annualized, both 7 and 3 percent discount rates).

FRA also estimates there may be ancillary benefits of the NPRM in terms of reduced environmental impact from disposing of reflective sheeting prematurely. Given reflective sheeting can remain effective more than 10 years, there would be less reflective sheeting replaced under the NPRM during the period of analysis. Based on the Preston (2014) study, if reflective sheeting lasts 15 to 20 years, then there would be 50 percent to 100 percent less reflective sheeting replaced and disposed of in comparison to the mandatory 10-year replacement. The benefit would be less environmental waste. Although FRA has not quantified this benefit, it could be important given the large number of rail cars affected. As in the regulation before this NPRM, reflective sheeting would still need replacement earlier than 10 years if damaged or obscured. Also, in the long run, the reflective sheeting applied on all cars would need replacement and disposal eventually. FRA invites comment on these environmental benefits.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' (67 FR 53461 (Aug. 16, 2002)) require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. FRA has not determined whether this proposed rule would have a significant economic impact on a substantial number of small entities, and has therefore prepared this IRFA. FRA seeks comment from small entities on the economic impacts of this proposed rule.

1. Reasons for Considering Agency Action

FRA is initiating this rulemaking to codify two types of waivers that entities have submitted for relief from the Reflectorization Standards (or part 224). First, entities that operate rail freight rolling stock in THEERP operations have petitioned for exclusion from the Reflectorization Standards. Generally, FRA has found these operations do not operate their equipment under low-light conditions (*i.e.,* at night) over highway-rail grade crossings. Therefore, these operations pose a low safety risk in terms of accidents/incidents preventable by retroreflective sheeting. By codifying waivers for equipment used in THEERP operations, FRA would provide relief from unnecessary paperwork burdens for these entities because they would no longer need to file these waivers. Second, the NPRM codifies a waiver granted to AAR to use an alternative method, specifically the comparator panel, to determine when to replace retroreflective sheeting. The existing Reflectorization Standards require replacement of retroreflective sheeting after 10 years of service, based on the best information available at the time the Reflectorization Standards were promulgated. Through its pilot program to test the comparator panel method, AAR has demonstrated that retroreflective sheeting can often perform effectively beyond 10 years. Using the comparator panel method allows retroreflective sheeting to be replaced as needed, resulting reduced costs and environmental waste. The comparator panel method may also result in replacing degraded or otherwise substandard sheeting sooner than it would have been under the 10-year replacement cycle, thus potentially increasing overall train visibility for motor vehicle drivers—and improving public safety. The proposed rule recognizes this more efficient method for evaluating retroreflective sheeting and makes it available to all entities operating freight rolling stock. In addition, the NPRM retains the option for entities to use the 10-year replacement cycle for entities that may find that method less burdensome for their particular operation. The proposed rule also removes outdated implementation schedules for retroreflective sheeting to improve regulatory clarity.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of this proposed rule is to enhance safety, promote innovation, and reduce the unnecessary paperwork burdens on the railroad industry. The provision to codify waivers for rail freight rolling stock used in THEERP operations would reduce paperwork costs for these operations. Except for larger railroads that operate older equipment as private business cars and for special events, most of the entities that operate rail cars used in THEERP operations are small entities. These small entities would benefit economically from the provision to codify THEERP-related waivers. The second provision to codify the alternative method (comparator panel) to determine when to replace retroreflective sheeting would reduce compliance costs for most of the railroad industry. ASLRRA indicated to FRA that most of the small railroads are using the comparator panel method; FRA estimates 85 percent of small entities are using the comparator panel, and 15 percent are using the 10-year replacement cycle. FRA has kept the 10-year replacement cycle as an alternative compliance method for that share of small entities that wish to use it. These small entities may have operations for

which using the comparator panel may be burdensome, such as operating equipment that may not be regularly interchanged, and incurring the costs for purchasing and using the panel. Some small entities may also find it less burdensome and prefer the regulatory simplicity of following a predetermined replacement schedule for retroreflective sheeting. For entities using the 10-year replacement option, the cost to comply would remain the same as it is before the proposed rule. For the entities using the alternative replacement option, FRA estimates the costs to comply would decrease, while enhancing safety.

The Secretary of Transportation has broad statutory authority to ''prescribe regulations and issue orders for every area of railroad safety'' under 49 U.S.C. 20103, including reflectorization of rail freight rolling stock regulated in part 224. FRA's review and codification of existing waivers issued under 49 U.S.C. 20103 is also responsive to section 22411 of the Infrastructure Investment and Jobs Act (Pub. L. 117–58).

3. A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Would 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 includes a for-profit ''line-haul railroad'' that has fewer than 1,500 employees and a ''short line railroad'' with fewer than 500 employees.[53]

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 final 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; and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less.[54] The $20 million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR part 1201, General Instruction 1–1. The current threshold is $40.4 million.[55] FRA is using this definition for the proposed rule.

Based on railroads that report to FRA under part 225 (Railroad Accidents/Incidents), FRA estimates the universe of small railroads consists of 744 Class III railroads. The NPRM's provision codifying waivers related to rail cars used in THEERP operations affects primarily the tourist railroads. FRA estimates there are 123 tourist railroads that are Class III railroads to which the NPRM would apply. Although some of these tourist railroads may have been excepted before this rulemaking because they are not on the general railroad system of transportation, and are excepted under existing § 224.3, it may have been unclear to stakeholders which railroads were exempt. For the provision codifying the alternative method, FRA estimates 85 percent of the Class III universe that chooses to use the comparator panel to evaluate sheeting will be affected, or about 632 small railroads.

In addition, FRA knows of one manufacturer of comparator panels, specifically Avery Dennison Corp. Avery Dennison employs more than 750 persons, the SBA [56] benchmark for large businesses. There are other manufacturers of retroreflective sheeting; FRA is aware of ORAFOL Americas, Inc, a subsidiary of the ORAFOL Group, that has purchased Reflexite Corp., and the 3M Co. Both manufacturers currently do not make comparator panels and are large businesses.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Class of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skill Necessary for Preparation of the Report or Record

The NPRM would provide relief for the small entities that operate rail freight rolling stock used in THEERP operations by excluding these rail cars from the Reflectorization Standards in part 224. In the absence of the NPRM, the affected railroads would continue to submit waivers under part 224. As explained in the regulatory analysis above, FRA expects 30 new waiver submittals, 15 extensions of these waivers, and 6 extensions of existing THEERP associated waivers over the 20-year period of analysis. FRA estimated each new waiver costs $3,097.50, each waiver extension costs $619.50, and requires 40 hours of labor and 8 hours of labor respectively. FRA accounted for the labor time using the burdened STB wage rate for Professional and Administrative employees of $77.44 per hour. In annualized terms using a 7 percent discount rate, the NPRM results in estimated paperwork reduction benefits of $5,654 per year. When divided by the class of 123 tourist railroads, each tourist railroad would save $45.79 per year.[57]

For the provision of the NPRM allowing use of an alternative method to evaluate and replace retroreflective sheeting, the compliance requirements for the small entities are the same as for all entities accounted for in the regulatory analysis above. This section generally uses annualized costs using a 7 percent discount rate to express the compliance costs for small entities. The annualized cost for the substantive change in the NPRM of using a comparator panel was estimated at $5.59 per car, in comparison to a baseline 10-year replacement cost of $6.37 per car, a savings of about $1.00 per car.[58] The other significant cost

[53] ''Size Eligibility Provisions and Standards,'' 13 CFR part 121, subpart A.

[54] 68 FR 24891 (May 9, 2003) (codified at appendix C to 49 CFR part 209).

[55] The Class III railroad revenue threshold is $40.4 million or less, for 2020. (The Class II railroad threshold is between $40.4 million and $900 million, and the Class I railroad threshold is $900 million or more.) *See* Surface Transportation Board (STB), *Data Issued in Regulatory Proceedings.* Revenue Deflators. Available: *https://www.stb.gov/reports-data/economic-data/. See* also STB Decision, Docket No. EP 748, Indexing the Annual Operating Revenues of Railroads, Decided June 10, 2020. *https://prod.stb.gov/reports-data/economic-data/railroad-revenue-deflator-factors/.*

[56] North American Industry Classification System (NAICS) Code 326113 signifies the Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing firms that would be affected by this proposal. Per SBA, any firm under NAICS code 326113 that employs more than 750 employees cannot qualify as a small business. U.S. Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification Codes* (Jan. 2019). Available: *https://www.sba.gov/document/support-table-size-standards.*

[57] Under the NPRM, railroads that operate equipment used in THEERP operations would save the cost of evaluating and applying retroreflective sheeting to their rail cars too, but since FRA has historically approved the majority of these waivers, the analysis accounts primarily for the savings from not having to file waivers.

[58] Calculation: NPRM cost = $9,270,752/1,658,334 avg. cars per year = $5.59 per car. Baseline cost = $10,558,758/1,658,334 = $6.37. Savings = $6.37 − $5.59 = $0.78 (annualized, 7%). The annualized costs were estimated using an

factor of transporting cars that may not be regularly interchanged for replacing retroreflective sheeting was estimated at $2.43 per car, or one-half the baseline cost. The cost for visual inspection and replacement under § 224.109, a requirement that does not change under the NPRM and so is ''a wash,'' is $5.08 per car. The costs for purchasing and recalibrating the comparator panel are negligible when divided by the many cars in the fleet. The cost for the comparator panel is also mitigated by its widespread use; FRA estimates 85 percent of the small entities are using the comparator panel method. (In undiscounted terms, the cost of the comparator panel is $190 per panel and $80 for recalibration every 2 years.) For all railroads, training employees to use the comparator panel was estimated as a marginal addition to the training employees already receive for brake tests and locomotive inspections. FRA estimated the training time as the actual time to use the comparator panel, an addition of about 3 minutes per employee. For small entities, the cost to train employees may be higher if they cannot incorporate training to use the comparator panel as part of existing training.

In annualized terms at 7 percent, the estimated total compliance costs under the NPRM are $13.15 per car, compared to baseline costs (*i.e.,* without the NPRM) of $16.30 per car, a savings of $3.15 per car. FRA estimated Class III railroads own 54,766 cars on average over the years 2016 through 2020. Thus, the estimated benefits for the small entities is $172,760. When divided by the 632 railroads that would use the comparator panel method, each railroad would save $273 per year (inclusive of waiver savings). These costs were estimated on a per-car basis. The benefits per small entity depends on the number of cars it operates.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

FRA is not aware of any Federal rule that duplicates, overlaps with, or conflicts with the proposed rule.

6. A Description of Significant Alternatives to the Rule

For railroads that find using the comparator panel burdensome for their operations and equipment, the NPRM permits the continued use of the 10-year replacement cycle. FRA retained the 10-year replacement cycle as an alternative compliance method specifically to reduce the potential economic impact on small entities (and for other entities that may have captive cars, *i.e.,* cars that are not regularly interchanged). The estimated 15 percent of small entities that continue to use the 10-year replacement cycle will see no change in their compliance costs from the regulation existing before the NPRM.

C. Paperwork Reduction Act

FRA is submitting the information collection requirements in this proposed rule to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995.[59] The sections that contain the new or revised information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden (hours) (C = A * B)	Total cost equivalent in U.S. dollar (D = C * wage rates)[60]
224.7—Waivers (Revised requirement due to proposed revision under § 224.3).	722 railroads and freight car owners.	1 petition	8 hours	8	$619.52
224.15(b)—Special approval procedures—Petitions for special approval of alternative standard.	2 manufacturers.	1 petition	40 hours	40	$3,097.60
—(d) Public comment on special approval procedures/petitions.	Manufacturers, railroads, or general public.	3 comments on special petition.	1 hour	3	$232.32
—(d)(3) Hearing on the petition in accordance with the procedures provided in § 211.25.	FRA does not believe that it will not need any additional information to consider any submitted petitions under the above requirement. Consequently, there is no burden associated with this provision.				
—(e) Disposition of petitions	Exempted from PRA under 5 CFR 1320.4(2).				
224.101—General requirements	The burden for this requirement is covered under § 224.15.				
224.103(d)—Characteristics retroreflective sheeting—Certification.	There would be no burden involved for new cars. Additionally, the cost for stamping, etching, molding, printing is included as part of the manufacturing process and consequently there is no burden associated.				
224.103(e)—Characteristics retroreflective sheeting—Alternative standards.	The burden for this requirement is covered under § 224.15.				
224.109(a)—Inspection and replacement of missing, damaged, or obscured retroreflective sheeting—Railroad freight cars—Railroads notification to person responsible for reporting mark after visual inspection for presence and condition when freight car on either side has less than 80% reflective sheeting of the damaged, obscured, or missing sheeting (revised text, section heading).	AAR/400 car shops.	33,510.22 notifications of defect and restriction.	5 minutes	2,792.52	$167,244.02

undiscounted NPRM cost of $16.21 per car and an undiscounted baseline cost of $68.21 per car, for a difference of $50.00 per car.

[59] 44 U.S.C. 3501 *et seq.*

[60] Throughout the tables in this document, the dollar equivalent cost is derived from the 2020 Surface Transportation Board's Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes 75-percent overhead charges.

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden (hours) (C = A * B)	Total cost equivalent in U.S. dollar (D = C * wage rates) [60]
—(b) Locomotive record of freight retroreflective sheeting defects found after inspection kept in locomotive cab or in railroad accessible electronic database that FRA can access upon request.	722 railroads and freight car owners.	2,459.70 records of defect and restriction.	5 minutes	204.98	$12,276.25
224.111(c)—Evaluation and replacement of 10-year-old or underperforming retroreflective sheeting—Performance-based replacement.	The burden for this requirement is covered under 49 CFR 232.305 (2130–0008), or a locomotive receives an annual inspection required by 49 CFR 229.27 (OMB Control Number 2130–0004).				
224.111(c)(1)(iv)—Evaluation and replacement—Labeling	The cost of labeling is included as part of the manufacturing process and consequently there is no burden associated.				
Total [61]	722 railroads and 400 car shops.	35,975 responses.	N/A	3,049	$183,470

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Ms. Hodan Wells, Information Collection Clearance Officer, at 202–493–0440. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them via email to Ms. Wells at *Hodan.Wells@dot.gov.*

OMB is required to decide concerning the collection of information requirements contained in this rulemaking between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, Federalism,[62] 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.

FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws under 49 U.S.C. 20106. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply, and preparation of a federalism summary impact statement for the proposed rule is not required.

E. International Trade Impact Assessment

The Trade Agreements 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 proposed rule is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

F. Environmental Impact

FRA has evaluated this proposed rule consistent with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), the Council of Environmental Quality's NEPA implementing regulations at 40 CFR parts 1500–1508, and FRA's NEPA implementing regulations at 23 CFR part 771 and determined that it 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 regulations that do not normally have a significant impact on the environment and therefore do not

[61] Totals may not add due to rounding.

[62] 64 FR 43255 (Aug. 10, 1999).

require either an EA or EIS.[63] Specifically, FRA has determined that this proposed rule is categorically excluded from detailed environmental review pursuant to 23 CFR 771.116(c)(15), ''[p]romulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise.''

The main purpose of this rulemaking is to revise FRA's Reflectorization Standards to reduce unnecessary costs and provide regulatory flexibility while maintaining safety. 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.[64] FRA has concluded that no such unusual circumstances exist with respect to this proposed rule and it meets the requirements for categorical exclusion under 23 CFR 771.116(c)(15).

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.[65] FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by Section 4(f).[66]

G. Executive Order 12898 (Environmental Justice)

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' require 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. The DOT order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT order 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. FRA has evaluated this proposed rule under Executive Order 12898 and the DOT order and has determined it would not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

H. Unfunded Mandates Reform Act of 1995

Under section 201 of the Unfunded Mandates Reform Act of 1995,[67] 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 promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 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 proposed rule would not result in the expenditure, in the aggregate, of $100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

I. Energy Impact

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' [68] FRA evaluated this proposed rule under Executive Order 13211 and determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

J. Privacy Act Statement

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

List of Subjects in 49 CFR Part 224

Penalties, Railroad safety, Reflectorization standards.

The Proposed Rule

For the reasons stated above, FRA proposes to amend part 224 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 224—REFLECTORIZATION OF RAIL FREIGHT ROLLING STOCK

■ 1. The authority citation for part 224 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20148 and 21301; 28 U.S.C. 2461 note; and 49 CFR 1.89.

■ 2. Amend § 224.3 by revising paragraphs (c) and (d) and adding paragraph (e) to read as follows:

§ 224.3 Applicability.

* * * * *

(c) Locomotives and passenger cars used exclusively in passenger service;

(d) Freight rolling stock that is subject to a reflectorization requirement promulgated by another Federal agency; or

(e) Freight rolling stock used for only for tourist, historic, excursion, educational, recreational, or private purposes, except for incidental freight service.

§ 224.107 [Removed and Reserved]

■ 3. Remove and reserve § 224.107.

■ 4. Revise § 224.109 to read as follows:

§ 224.109 Inspection and replacement of missing, damaged, or obscured retroreflective sheeting.

(a) *Railroad freight cars.* Retroreflective sheeting on railroad freight cars subject to this part must be visually inspected for presence and

[63] 40 CFR 1508.4.

[64] 23 CFR 771.116(b).

[65] *See* 16 U.S.C. 470.

[66] *See* Department of Transportation Act of 1966, as amended (Pub. L. 89–670, 80 Stat. 931); 49 U.S.C. 303.

[67] Public Law 104–4, 2 U.S.C. 1531.

[68] 66 FR 28355 (May 22, 2001).

condition whenever a car undergoes a single car air brake test required under 49 CFR 232.305. If at the time of inspection less than 80 percent of the amount of sheeting required under § 224.105 on either side of a car is present, not damaged, and not obscured, the inspecting railroad or contractor shall promptly notify the person responsible for the reporting mark, as indicated in the Universal Machine Language Equipment Register, of the damaged, obscured, or missing sheeting (unless the inspecting railroad or contractor is the person responsible for the reporting mark). The inspecting railroad or contractor shall retain a written or electronic copy of each such notification made for at least two years from the date of the notice and shall make these records available for inspection and copying by the FRA upon request. Any person notified of a defect under this section shall have nine months (270 calendar days) from the date of notification to repair or replace the damaged, obscured, or missing sheeting. Where the inspecting railroad or contractor is the person responsible for the reporting mark, the person shall have nine months (270 calendar days) from the date of the inspection to repair or replace the damaged, obscured, or missing sheeting.

(b) *Locomotives.* Retroreflective sheeting must be visually inspected for presence and condition when the locomotive receives the annual inspection required under 49 CFR 229.27. If at the time of inspection, less than 80 percent of the amount of sheeting required under § 224.105 on either side of a locomotive is present, not damaged, and not obscured, the damaged, obscured, or missing sheeting must be repaired or replaced within nine months (270 calendar days) from the date of inspection, provided a record of the defect is maintained in the locomotive cab or in a secure and accessible electronic database to which FRA is provided access on request.

■ 5. Revise § 224.111 to read as follows:

§ 224.111 Evaluation and replacement of 10-year old or underperforming retroreflective sheeting.

(a) *Replacement process.* Retroreflective sheeting required by this part shall comply with the replacement process in either paragraph (b) or (c) of this section.

(b) *10-year replacement cycle.* Regardless of condition, retroreflective sheeting required by this part shall be replaced with new, undegraded, sheeting no later than 10 years after the initial installation date. At the time of replacement, it is not necessary to remove the previously installed sheeting unless it interferes with the placement of the replacement sheeting, as required by § 224.106, but the previously installed sheeting shall not be considered in calculating the required minimum area of retroreflective material required as shown in Table 2 to this subpart.

(c) *Replacement based on retroreflective comparator panel.* Except as provided in paragraph (c)(3) of this section, retroreflective sheeting shall be evaluated using a properly calibrated comparator panel, manufactured to the specifications outlined under paragraph (c)(1) of this section, whenever a car undergoes a single car air brake test required by 49 CFR 232.305, or a locomotive receives an annual inspection required by 49 CFR 229.27.

(1) *Retroreflective comparator panel specifications*—(i) *Retroreflectivity.* Retroreflective comparator panels shall have the minimum (and maximum, if applicable) retroreflectivity values as outlined in Table 1 to paragraph (c)(1)(iv) of this section.

(ii) *Color.* Retroreflective comparator panels shall be yellow or white as outlined in § 224.103(b).

(iii) *Construction.* Retroreflective comparator panels shall be 4 inches wide by 4 inches high, be constructed with glass-beaded material or other material that displays uniform appearance when rotated and viewed with a light source, and have a magnetic backing so that the panel can be attached to rail freight rolling stock.

(iv) *Labeling.* Retroreflective comparator panels shall have a waterproof and dust-proof label affixed to the backing. The label shall contain: the phrase ''Retroreflective Comparator Panel—Yellow'' or ''Retroreflective Comparator Panel—White;'' and the name of the manufacturer, the part, model, or serial number, the date the panel was manufactured, the target retroreflectivity level to which the panel was manufactured (measured in cd/lx/m^2), and a space provided for the certified recalibration date. Retroreflective comparator panels shall be recalibrated at least every two years and the date of a panel's most recent recalibration must appear in the space provided on the label.

Table 1 to § 224.111(c)(1)(iv) – Retroreflective Comparator Panel Requirements

Retroreflective Comparator Panel Requirements			
Color	Required Retroreflectivity (cd/lx/m^2) at -4° entrnace and of 0.2° observation angles		Required Retroreflectivity (cd/lx/m^2) at 30° entrnace and of 0.5° observation angles
	Minimum	Maximum	Minimum
White	250	285	60
Yellow	150	170	35

(2) *Retroreflective comparator panel evaluation process and criteria.* Each retroreflective sheeting on rail freight rolling stock shall be evaluated on its performance through use of a properly calibrated comparator panel. The evaluation procedure shall consist of the following:

(i) Retroreflective sheeting shall be visually evaluated with the use of a light source. The light source must be of sufficient intensity to illuminate and overcome ambient lighting conditions. A brighter light source (LED) is recommended in daylight conditions.

(ii) Retroreflective comparator panels shall conform to the requirements outlined in paragraph (c)(1) of this section, and the panel's color shall match the color of the installed sheeting being evaluated.

(iii) The comparator panel shall be placed directly adjacent to, or overlapping, the retroreflective sheeting being evaluated. The retroreflective sheeting shall also be cleaned, as necessary, before the evaluation begins.

(iv) Retroreflective sheeting and the comparator panel shall be evaluated from a position perpendicular to the installed sheeting, preferably from a distance of 15 feet from the installed sheeting and the comparator panel. In the event conducting the evaluation from 15 feet away is not practicable, the evaluation may be conducted from a distance of between 10 and 20 feet.

(v) The light source shall be positioned adjacent to the inspector's eye (left or right) and directed at the sheeting and comparator panel, and a comparison of the reflected light intensity of the entire installed sheeting to that of the comparator panel shall be made. The installed sheeting shall pass or fail based on the following criteria:

(A) If the perceived reflected light intensity of the entire installed sheeting appears brighter than that of the comparator panel, the installed sheeting passes the evaluation.

(B) If the perceived reflected light intensity of the entire installed sheeting does not appear brighter than that of the comparator panel, or if it cannot be discerned if one is brighter than the other, the sheeting fails the evaluation and shall be replaced prior to the equipment returning to service.

(C) Installed sheeting that is damaged, obscured, or missing, cannot be evaluated with the comparator panel and shall be replaced prior to the equipment returning to service.

(3) *Handheld retroreflectometers.* A properly calibrated handheld retroreflectometer may be used in lieu of a comparator panel, subject to the following conditions:

(i) The handheld retroreflectometer shall be an annular device. A single measurement on a strip of sheeting shall suffice with an annular device, provided that the sheeting is not damaged, obscured, or missing.

(ii) The handheld device shall be placed directly against the reflective sheeting, and the measurement shall be made based on the device manufacturer's recommendation.

(iii) The minimum allowable retroreflective value is 150 cd/lx/m^2 for yellow sheeting and 250 cd/lx/m^2 for white sheeting, when measured at the −4° entrance angle and 0.2° observation angle configuration. Sheeting that does not meet these minimum allowable retroreflectivity values shall be replaced prior to the equipment returning to service.

Issued in Washington, DC.

Amitabha Bose,

Administrator.

[FR Doc. 2022–15192 Filed 7–20–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2022–0100; Cost code FF06E00000, Fund 223, WBS FXES11130600000]

RIN 1018–BG79

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the Gray Wolf in the State of Colorado; Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of intent, announcement of public meetings, and request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act of 1969 to evaluate the potential environmental impacts of issuing a proposed rule requested by the State of Colorado for its reintroduction and management of the gray wolf (*Canis lupus*). As part of the reintroduction and management planning process, the State has requested that the Service designate an experimental population under section 10(j) of the Endangered Species Act of 1973. We are considering promulgating a section 10(j) rule to address components of the gray wolf restoration and management plan being developed by the State of Colorado. The proposed rule would set forth regulations to manage reintroduced gray wolves in Colorado and potentially adjoining States to reduce potential impacts to stakeholders while ensuring reintroduction and management of wolves is consistent with Federal regulations. We invite input from other Federal and State agencies, Tribes, nongovernmental organizations, private-sector businesses, and members of the public on the scope of the EIS, alternatives to our proposed approaches for assisting in the reintroduction and management of the gray wolf in Colorado, and the pertinent issues that we should address in the EIS.

DATES:

Comment submission: To ensure consideration of written comments, they must be received on or before August 22, 2022. Comments submitted online at *https://www.regulations.gov* (see **ADDRESSES**) must be received by 11:59 p.m. eastern time on the closing date.

Public meetings: We will hold public scoping open houses on August 2, 3, and 4, 2022. In addition, we will present a public webinar. Additional information regarding these scoping sessions, including the times, will be available on our website at *https://www.fws.gov/office/colorado-ecological-services-field-office.* Persons wishing to participate in the public scoping meetings who need special accommodations should contact Nicole Alt at (303) 236–4773 or *Colorado_wolf_10j@fws.gov* by July 27, 2022.

ADDRESSES:

Comment submission: You may submit written comments by one of the following methods. Please do not submit comments by both methods.

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R6–ES–2022–0100.
- *U.S. mail:* Public Comments Processing, Attn: FWS–R6–ES–2022–0100; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

Please note in your submission that your comments are in regard to the Service's designation of an experimental population of gray wolves in Colorado and/or issuance of ESA section 10 permits. We will post all information received on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Availability of Comments below for more information).

Public meetings: We will hold public scoping open houses on August 2, 3, and 4 in the communities of Craig, Silverthorne, and Gunnison, Colorado. Additional information regarding these scoping sessions, including the venues, will be available on our website at *https://www.fws.gov/office/colorado-ecological-services-field-office.* Comment forms will be provided for written comments.

In addition, we will present a public webinar. Information regarding registration for the webinar can be found at *https://www.fws.gov/office/colorado-ecological-services-field-office.*

FOR FURTHER INFORMATION CONTACT: Nicole Alt, Colorado Ecological Services Supervisor, by phone at 303–236–4773, or by email at *Colorado_wolf_10j@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

Unregulated hunting and trapping and the widespread use of poisons resulted in the eradication of gray wolves across most of the species' historical range in the contiguous United States by the early to mid-1900s. Subspecies or regional populations of subspecies of the gray wolf were first listed under the Endangered Species Preservation Act of 1966 and the Endangered Species Act of 1969, predecessors of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*). For a complete regulatory history of wolves in the lower 48 United States through 2018, please see our 2020 final delisting rule (85 FR 69778, November 3, 2020), which went into effect on January 4, 2021. That rule removed Federal protections for wolves in the lower 48 United States, with the exception of the northern Rocky Mountains (NRM) wolf populations in Idaho, Montana, Wyoming, the eastern one-third of Oregon and Washington, and a small portion of north-central Utah, which were already delisted. The final delisting rule was vacated by court order on February 10, 2022 (*Defenders of Wildlife* v. *U.S. Fish & Wildlife Serv.,* No. 21–CV–00344–JSW, 2022 WL 499838 (N.D. Cal. Feb. 10, 2022)). With that court order, gray wolves outside the delisted NRM wolf population, including Colorado, were placed back under the protections of the ESA. Thus, any take (which includes activities to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct) of wolves without a permit or other authorization is prohibited by Federal law.

Prior to the reintroduction of wolves into the NRM in 1995 and 1996, the last known wolf in Colorado was killed in Conejos County in 1945. Since wolves were reintroduced into the NRM populations in 1995 and 1996, an increasing number of dispersing wolves have been documented in Colorado. The first confirmed wolf in Colorado in modern times was struck and killed by a vehicle near Idaho Springs in 2004. Although four additional lone wolves have been confirmed in Colorado since 2004, no resident packs were documented in the State until 2019. In January 2020, Colorado Parks and Wildlife (CPW) field personnel followed up on sighting reports from the public and confirmed at least six wolves traveling together in extreme northwest Colorado. This group was down to a single individual later that year and, at present, there is no indication that any wolf or wolves remain in this northwest corner of the State. Separately, in north-central Colorado, a disperser from Wyoming was first documented during summer 2019 and paired up with another wolf during winter 2020. This pair produced offspring in spring 2021, becoming the first documented reproductively active pack in Colorado in recent history. By the end of 2021, this pack contained the only known wolves in the State, comprising eight individuals. No evidence of reproduction in this pack has been documented in 2022.

In November 2020, Proposition 114, now Colorado Revised Statute 33–2–105.8, was approved by Colorado voters. The statute requires the CPW Commission to develop a plan to restore and manage gray wolves and take the steps necessary to reintroduce gray wolves west of the Continental Divide no later than December 31, 2023. The statute also requires CPW to assist livestock producers in preventing and resolving wolf conflicts with livestock. Since the status of gray wolves under the ESA is currently endangered, they are federally protected throughout the State of Colorado. Subsequent to the adoption of Colorado Revised Statute 33–2–105.8, CPW requested that the Service develop a rule under section 10(j) of the ESA to provide increased management flexibility for the species.

While reintroduction programs for species listed under the ESA typically are spearheaded by the Federal Government, Colorado Revised Statute 33–2–105.8 is unique in that the reintroduction and restoration effort of a federally listed species is citizen-directed and State-led. However, the Service has the authority to designate an experimental population under section 10(j) of the ESA if the species will be released into suitable natural habitat outside the species' current range (but within its probable historic range). The Service must determine whether experimental populations are essential or nonessential to the continued existence of an endangered or threatened species. A section 10(j) designated population is treated as threatened under the ESA and provides the Service the discretion to enact management restrictions, protective measures, or other special management concerns of the population. In our 1994 EIS for the reintroduction of gray wolves to Yellowstone National Park and Central Idaho, we defined a wolf population as follows: ''A wolf population is at least 2 breeding pairs of wild wolves successfully raising at least 2 young each year (until December 31 of the year of their birth), for 2 consecutive years in an experimental area.''

In response to the request by CPW, we are now considering a proposed rule, consistent with section 10 of the ESA, at the request of the State of Colorado for the reintroduction and management of gray wolves in part of the species' historical range in Colorado. The section 10(j) rule would address components of the gray wolf restoration and management plan developed by the State of Colorado. The rule would reduce potential impacts to stakeholders while ensuring that reintroduction and management of wolves is likely to be successful and benefit conservation of the species as a whole.

Need for Agency Action

Currently, the Service lists the gray wolf as endangered. To facilitate reintroduction efforts, the State of Colorado requested that the Service designate wolves in Colorado as an experimental population under section 10(j) of the ESA. This designation would reduce the regulatory impact of reintroducing a federally listed species in a specific geographic area (within a proposed boundary), contributing to the species' conservation. The EIS will evaluate the use of the section 10(j) rulemaking process or other section 10 actions to support the State of Colorado's reintroduction.

NEPA Analysis of ESA Section 10 Actions

The National Environmental Policy Act (NEPA; 42 U.S.C. 4321–4347) requires Federal agencies to undertake an assessment of environmental effects of any proposed action prior to making a final decision and implementing the decision. NEPA also established the Council on Environmental Quality (CEQ), which issued regulations implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). The Service has regulatory authority under the ESA to manage the conservation and recovery of federally listed species, including creating rules and regulations and permitting legitimate activities that

would otherwise be prohibited by the ESA. Development of an ESA section 10(j) rule or issuance of a section 10(a)(1)(A) permit are Federal actions requiring review under NEPA.

Consistent with CEQ guidance for implementing NEPA, we intend to complete an EIS to consider approaches in response to CPW's request for regulatory tools in reintroducing and managing the endangered gray wolf, specifically when it leads to the reintroduction of gray wolves to Colorado. The EIS will address the potential environmental impacts of a range of reasonable alternatives (including rules and/or permits) under section 10 of the ESA. The potential environmental impacts assessed in the EIS would include the effects on gray wolves from management measures; effects on other environmental resources such as other federally listed species and cultural and Tribal resources; potential socioeconomic effects, including impacts on economic activities such as tourism and agriculture; and effects on a range of other resources identified through internal and external scoping. We will address our compliance with other applicable authorities in our NEPA review.

Responsibilities to Tribes

The Service has unique responsibilities to Tribes, including under the National Historic Preservation Act (16 U.S.C. 470 *et seq.*); the American Indian Religious Freedom Act (42 U.S.C. 1996); Native American Grave Protection and Repatriation Act (25 U.S.C. 3001); Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb *et seq.*); Joint Secretarial Order 3403, Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters (November 15, 2021); Secretarial Order 3206, American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the ESA (June 5, 1997); Executive Order 13007, Indian Sacred Sites (61 FR 26771, May 29, 1996); and the Service's Native American Policy. We apply the term ''Tribal'' or ''Tribe(s)'' generally to federally recognized Tribes and Alaska Native Tribal entities.

The Service will separately consult with Tribes on the proposals set forth in this document. We will also ensure that those Tribes wishing to engage directly in the NEPA process will have the opportunity to do so. As part of this process, we will protect the confidential nature of any consultations and other communications we have with Tribes, to the extent permitted by the Freedom of Information Act and other laws.

Possible Actions

We are considering various approaches for responding to the State of Colorado's request in its effort to reintroduce and manage gray wolves in Colorado. These regulatory approaches would address the Service's issuance of a new rule under section 10(j) of the ESA, and potentially establish an assurance agreement and permit under section 10(a)(1)(A) of the ESA for an existing population, as defined above, of gray wolves in Colorado. These approaches may be considered separately or in any combination, and the EIS may consider the effects from each approach and/or combined approaches.

Under the no-action alternative, the Service would not promulgate a section 10(j) rule and not issue a section 10(a)(1)(A) permit. CPW would reintroduce gray wolves to Colorado without a section 10(j) rule or an assurance agreement and section 10(a)(1)(A) permit. Under this alternative, management of gray wolves in Colorado would be subject to section 6 of the ESA and the prohibitions under section 9 of the ESA. Thus, the Service would not develop a rule or issue a permit that would provide the State with additional management flexibility.

Solicitation of Comments

In accordance with NEPA, we are conducting a public scoping process to invite input on the range of alternatives and issues to be addressed during the preparation of the EIS. Scoping is an early and open process for determining the scope of issues to be addressed and identifying issues that should be considered in selecting an alternative for implementation. To that end, during the scoping process, we are inviting input from other interested government agencies, Native American Tribes, the scientific community, industry, nongovernmental organizations, members of the public, and other interested parties. We solicit input on the following issues:

(1) The regulatory approaches we are considering for managing reintroduced gray wolves in Colorado.

(2) Other approaches, or combinations of approaches, we should consider with respect to managing reintroduced gray wolves, including potential management actions in adjoining States.

(3) Specific requirements for NEPA analyses related to the proposed action and alternative approaches.

(4) Considerations for evaluating the significance of impacts on gray wolves and other affected resources, such as other listed or sensitive wildlife and plant species, cultural resources, and socioeconomic resources or activities.

(5) Information regarding other resources that may be affected by the proposed action.

(6) Considerations for evaluating the interactions between affected natural resources.

(7) The potential costs to comply with the actions under consideration, including those that would be borne by the Federal Government and private sectors.

(8) Considerations for evaluating the significance of impacts on species, locations, or other resources of religious or cultural significance for Tribes and impacts to cultural values from the actions being considered.

(9) Considerations for evaluating climate change effects to gray wolves and other affected resources.

(10) How to integrate existing guidance and plans, such as the Colorado wolf management plan (under development), into the proposed regulatory framework.

Availability of Comments

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may ask request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

The authorities for this action are sections 4, 6, and 10 of the ESA.

Anna Muñoz,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–15610 Filed 7–20–22; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 87, No. 139
Thursday, July 21, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by August 22, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Secure Rural Schools Act.

OMB Control Number: 0596–0220.

Summary of Collection: The USDA Forest Service (FS) is requesting the extension of OMB approval to collect information from counties receiving funds under Title III of Secure Rural Schools (SRS) and Community Self-Determination Act (Act). The information will certify and describe the amounts expended and the uses of the funds during the applicable year. The FS is also requesting to collect information from the counties that will certify the amount of Title III funds received since October 2008 that has not been obligated as of September 30 of the previous year. The Department of the Interior (DOI), Bureau of Land Management (BLM), will coordinate on this information collection from counties in which the BLM administers Federal lands covered by the Act.

Section 303(a) of the Secure Rural Schools and Community Self-Determination Act of 2000 (the Act), reauthorized in Public Law 115–141, Public Law 110–343, Public Law 112–141, Public Law 113–40, and Public Law 114–10 requires the appropriate official of a county that receives funds under Title III of the Act to submit to the Secretary concerned (the Secretary of Agriculture or the Secretary of the Interior, as appropriate) an annual certification that the funds expended have been used for the uses authorized under section 302(a) of the Act.

Need and Use of the Information: The information collected will identify the participating county and the year in which the expenditures were made and will include amounts not obligated by September 30 of the previous year. Information includes the name, title, and signature of the official certifying that the expenditures were for uses authorized under section 302(a) of the Act, and the date of the certification. Information will also be collected including the amount of funds expended in the applicable year and the uses for which the amount were expended referencing the authorized categories; (1) carry out activities under the Firewise Communities program; (2) reimburse the participating county for emergency services performed on Federal land and paid for by the participating county; and (3) to develop community wildfire protection plans in coordination with the appropriate Secretary or designee. The information will be used to verify that participating counties have certified that funds were expended as authorized in the Act.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 360.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 8,640.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–15568 Filed 7–20–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Summer Food Site Locations for State Agencies

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a revision of a currently approved collection for the voluntary collection of summer meal site information from State agencies.

DATES: Written comments must be received on or before September 19, 2022.

ADDRESSES: Comments may be sent to: Alice McKenney, Community Meals Branch, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314. Comments may also be submitted via email to *SM.FN.CNDinternet@usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Alice McKenney at 703–605–4150.

SUPPLEMENTARY INFORMATION:

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Summer Food Site Locations for State Agencies.

Form Number: FNS–905.

OMB Number: 0584–0649.

Expiration Date: 10/31/2022.

Type of Request: Revision of a currently approved collection.

Abstract: The Form FNS–905: Summer Food Site Locations for State Agencies is the instrument used to voluntarily collect information from State agencies about approved summer meal sites for the Summer Food Service Program (SFSP) and the Seamless Summer Option (SSO) of the National School Lunch Program. The form collects site name, location, and operating details, such as dates and times of the day that the sites are in operation, that provide summer meals to children 18 years and younger in low income communities during summer operations. The Form FNS–905 may only be completed by State agencies.

The Form FNS–905 is part of requirements found in statute in Section 26 of the National School Lunch Act (NSLA) (42 U.S.C. 1769g), which mandates that FNS enter into a contract with a nongovernmental organization to develop and maintain a national information clearinghouse for grassroots organizations working on hunger, food, nutrition, and other agricultural issues, including food recovery, food assistance and self-help activities to aid individuals to become self-reliant, and other activities that empower low-income individuals. The Form FNS–905 is specific to summer meal site data and populates the National Hunger Clearinghouse database with summer meals site information and locations. The USDA National Hunger Clearinghouse is a resource for the public to find information about the food safety net. Information collection activities associated with the USDA National Hunger Clearinghouse and its associated FNS–543 form, National Hunger Clearinghouse Database Form, are covered under OMB Control number 0584–0474, which is approved through April 30, 2025. This notice is only soliciting comments on the collection of summer meals site information from State agencies via the Form FNS–905 that is approved under this collection.

FNS also provides information about approved meal sites for individuals to find meals for children when school is out, and for groups that assist these low income individuals or communities to find meals for children in the summer. The information provides an innovative way to connect families to meals during summer operations, and assists communities in the development, coordination, and evaluation of strategic initiatives, partnership, and outreach activities.

A proposed change in the frequency of responses since the last submission is expected to increase the burden hours for this collection from 53 to 73 hours annually. In addition, FNS is removing $1,713 in capital, start-up, operational, and maintenance costs during this revision. While preparing this notice, FNS determined that the $1,713 costs were hourly respondent costs rather than capital, start-up, operational, or maintenance costs. While capital, start-up, operational, and maintenance costs are reported as part of the burden inventory for the collection, the hourly respondent costs are not reported in this manner. Therefore, FNS is removing these costs during this revision.

Affected Public: State, Local and Tribal Government: Respondent groups identified include State agencies administering the SFSP.

Estimated Number of Respondents: The total estimated number of respondents is 53. This includes: the 50 States, the District of Columbia, Virgin Islands and Puerto Rico State agencies which administer the SFSP.

Estimated Number of Responses per Respondent: Form FNS–905 is voluntary and State agencies are asked to complete the form at least once annually. However, State agencies may submit weekly updates during summer operations. Prior to the previous OMB approval, the average submission per State agency was 8. Since then, the average submission per State agencies has slightly increased. Data has shown that State agencies voluntarily submit an average of 11 revisions in the course of a year. Therefore, FNS is proposing to increase the number of responses per respondent from 8 responses to 11 responses in this request.

Estimated Total Annual Responses: 583.

Estimated Time per Response: The estimated time of response is approximately 7.5 minutes (0.125 hours) for each response.

Estimated Total Annual Burden on Respondents: 73 hours. See the table below for estimated total annual burden for the State agencies.

Respondent	Estimated number respondent	Responses annually per respondent	Total annual responses (col. bxc)	Estimated average number of hours per response	Estimated total hours (col. dxe)
Reporting Burden:					
State agencies	53	11	583	0.125	72.875
Total Reporting Burden	53		583		72.875

Cynthia Long,

Administrator, Food and Nutrition Service.

[FR Doc. 2022–15579 Filed 7–20–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Superior National Forest; Minnesota; Rainy River Withdrawal Environmental Assessment

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice to extend comment period.

SUMMARY: The Forest Service, U.S. Department of Agriculture, has prepared an environmental assessment to support its application for a 20-year withdrawal of the Rainy River watershed from disposition of Federally owned minerals under United States mineral and geothermal leasing laws. The intent of the requested withdrawal is to protect and preserve natural and cultural resources in the Rainy River watershed, including the Boundary Waters Canoe Area Wilderness (BWCAW), Mining Protection Area (MPA), and the 1854 Ceded Territory, from the known and potential adverse environmental impacts arising from exploration and development of Federally owned minerals. This notice is to inform the public that the Forest Service is extending the opportunity to comment on the environmental assessment by 15 days.

DATES: Comments concerning the environmental assessment must be received by Friday, August 12, 2022.

ADDRESSES: The environmental assessment and supporting documents are available on the project web page at *http://go.usa.gov/xtaCw*. Electronic comments are preferred through the project website at *https://go.usa.gov/xuH43*. Comments may also be sent electronically to *comments-eastern-superior@usda.gov*. Written comments may be sent to Forest Headquarters, 8901 Grand Avenue Place, Duluth, MN 55808.

FOR FURTHER INFORMATION CONTACT: Matt Judd, Minerals Project Manager, at *matthew.judd@usda.gov* or 218–626–4300.

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the requested withdrawal is to protect and preserve natural and cultural resources in the Rainy River watershed, including the BWCAW, MPA, and the 1854 Ceded Territory, from the known and potential adverse environmental impacts arising from exploration and development of Federally owned minerals. The withdrawal is needed because the Forest Service and the Bureau of Land Management (BLM) have seen and can reasonably anticipate increasing interest within the private sector for developing the copper-nickel ore minerals in the Duluth Complex that may adversely impact the Rainy River watershed.

Proposed Action

The Secretary of the Interior would issue a public land order, and approximately 225,504 acres of National Forest System lands in the Rainy River watershed would be withdrawn from disposition under the United States mineral and geothermal leasing laws for a 20-year term, subject to valid existing rights. The withdrawal would restrict the BLM from processing or issuing new hardrock prospecting permits and mineral leases on National Forest System lands in the withdrawal boundary. However, the withdrawal would not prohibit ongoing or future exploration or mining extraction operations on valid existing rights, as determined by the BLM.

The withdrawal would not prohibit activities on non-federal (surface and mineral) ownerships. State, county, and private mineral interests could continue to exercise their ownership rights. However, if fee simple title of these lands and minerals were acquired by the United States during the withdrawal period, through means such as purchase or exchange to be managed by the Forest Service, such acquisitions would be subject to the withdrawal. Partial federal mineral interests, where the Federal government owns less than 100 percent of the mineral estate, would also not be affected by the withdrawal. No other management changes would be made affecting access to private inholdings, federal mineral material operations (sand, gravel, and dimension stone), or management of other forest resources such as timber, wildlife, and recreation.

Lead and Cooperating Agencies

The Forest Service is the lead agency for preparing the environmental assessment. The BLM is a cooperating agency for the NEPA analysis (40 CFR 1508.1(e)). The BLM will independently evaluate and review the analysis and any other documents needed for the Secretary of the Interior to make a decision on the requested withdrawal.

Responsible Official

The Secretary of the Interior is the decision-maker for the requested withdrawal.

How To Comment

Comments may be submitted in electronic (preferred) or hard-copy form to the website or addresses provided in the **ADDRESSES** section of this notice. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental assessment. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

The proposed withdrawal is not subject to Forest Service objection procedures at 36 CFR 218 because the decision to be made is by the Secretary of the Interior.

Dated: July 18, 2022.

Deborah Hollen,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2022–15589 Filed 7–20–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–22–Agency–0034]

60-Day Notice of Proposed Information Collection: Lien Accommodations and Subordinations

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, as amended, the United States Department of Agriculture (USDA) Rural Utilities Service (RUS) announces its' intention to request an extension of a currently approved information collection and invites comments on this information collection.

DATES: Comments on this notice must be received by September 19, 2022 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search Field'' box, labeled ''Search for Rules, Proposed Rules, Notices or Supporting Documents,'' enter the following docket number: (RUS–22–

Agency–0034). To submit or view public comments, click the ''Search'' button, select the ''Documents'' tab, then select the following document title: (60-Day Notice of Proposed Information Collection: Lien Accommodations and Subordinations; 7 CFR 1717, subparts R & S; OMB Control No.: 0572–0100) from the ''Search Results'' and select the ''Comment'' button. Before inputting your comments, you may also review the ''Commenter's Checklist'' (optional). Insert your comments under the ''Comment'' title, click ''Browse'' to attach files (if available). Input your email address and select ''Submit Comment.''

Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

Other Information: Additional information about Rural Development and its programs is available on the internet at *https://www.rd.usda.gov.*

All comments will be available for public inspection online at the Federal eRulemaking Portal (*https://www.regulations.gov*).

FOR FURTHER INFORMATION CONTACT: Crystal Pemberton, Management Analyst, Branch 1, Rural Development Innovation Center—Regulations Management Division, United States Department of Agriculture, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: 202–260–8621. Email: *Crystal.Pemberton@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies the following information collection that RUS is submitting to OMB as extension to an existing collection with Agency adjustment.

Title: Lien Accommodations and Subordinations; 7 CFR 1717, Subparts R & S.

OMB Control Number: 0572–0100.

Expiration Date of Approval: November 30, 2022.

Type of Request: Revision of a currently approved collection.

Estimate of Burden: Public Reporting burden for this collection of information is estimated to average 19 hours per response.

Respondents: Not-for-profit institutions; Business or other for profit.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 19 hours.

Abstract: The Rural Electrification Act of 1936 (The RE Act), as amended (7 U.S.C. 901 *et seq.*), authorizes and empowers the Administrator of RUS to make loans in the several United States and Territories of the United States for rural Electrification and the furnishing of electric energy to persons in rural areas who are not receiving central station service. The RE Act also authorizes and empowers the Administrator of RUS to provide financial assistance to borrowers for purposes provided in the RE Act by accommodating or subordinating loans made by the national Rural Utilities Cooperative Finance Corporation, the Federal Financing Bank, and other lending agencies. Title 7 CFR part 1717, subparts R & S sets forth policy and procedures to facilitate and support borrowers' efforts to obtain private sector financing of their capital needs, to allow borrowers greater flexibility in the management of their business affairs without compromising RUS loan security, and to reduce the cost to borrowers, in terms of time, expenses and paperwork, of obtaining lien accommodations and subordinations. The information required to be submitted is limited to necessary information that would allow the Agency to make a determination on the borrower's request to subordinate and accommodate their lien with other lenders.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Copies of this information collection can be obtained from Crystal Pemberton, Regulations Team, Innovation Center, at email: *Crystal.Pemberton@usda.gov.* All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2022–15607 Filed 7–20–22; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–22–AGENCY–0037]

60-Day Notice of Proposed Information Collection: Request for Release of Lien and/or Approval of Sale, RUS Form 793; OMB Control No.: 0572–0041

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the United States Department of Agriculture (USDA), the Rural Utilities Service (RUS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by September 19, 2022 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search Field'' box, labeled ''Search for Rules, Proposed Rules, Notices or Supporting Documents,'' enter the following docket number: (RUS–22–AGENCY–0037). To submit or view public comments, click the ''Search'' button, select the ''Documents'' tab, then select the following document title: (60-Day Notice of Proposed Information Collection: Request for Release of Lien and/or Approval of Sale, RUS Form 793; OMB Control No.: 0572–0041) from the ''Search Results'' and select the ''Comment'' button. Before inputting your comments, you may also review the ''Commenter's Checklist'' (optional). Insert your comments under the ''Comment'' title, click ''Browse'' to attach files (if available). Input your email address and select ''Submit Comment.''

Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

Other Information: Additional information about Rural Development and its programs is available on the internet at *https://www.rd.usda.gov*.

All comments will be available for public inspection online at the Federal eRulemaking Portal (*https://www.regulations.gov*).

FOR FURTHER INFORMATION CONTACT: Crystal Pemberton, Management Analyst, Branch 1, Rural Development Innovation Center—Regulations Management Division, United States Department of Agriculture, 1400 Independence Ave. SW, Washington, DC 20250–1522. Phone: 202–260–8621 email *Crystal.Pemberton@usda.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies the following information collection that RUS is submitting to OMB for extension.

Title: Request for Release of Lien and/or Approval of Sale, RUS Form 793.

OMB Control Number: 0572–0041.

Expiration Date of Approval: November 30, 2022.

Type of Request: Extension of a currently approved information collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8 hours per response.

Respondents: Business or other for-profit; not-for-profit organizations.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 227.

Abstract: The RUS makes mortgage loans and loan guarantees to electric and telecommunications systems to provide and improve electric and telecommunications service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act). All current and future capital assets of RUS borrowers are ordinarily mortgaged or pledged to the Federal Government as security for RUS loans. Assets include tangible and intangible utility plant, non-utility property, construction in progress, and materials, supplies, and equipment normally used in a telecommunications system. The RE Act and the various security instruments, *e.g.,* the RUS mortgage, limit the rights of a RUS borrower to dispose of capital assets.

The RUS Form 793, Request for Release of Lien and/or Approval of Sale, allows telecommunications program borrowers to seek agency permission to sell some of its assets. The form collects detailed information regarding the proposed sale of a portion of the borrower's system. RUS telecommunications borrowers fill out the form to request RUS approval in order to sell capital assets. The reporting burden covered by this collection of information consists of forms, documents and written burden to support a request for funding for request for release of lien and/or approval of sale.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Copies of this information collection can be obtained from Crystal Pemberton, Rural Development Innovation Center—Regulations Management Division, at (202) 260–8621. Email: *Crystal.Pemberton@usda.gov*.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2022–15581 Filed 7–20–22; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–22–AGENCY–0035]

60-Day Notice of Proposed Information Collection: Special Evaluation Assistance for Rural Communities and Households Program (SEARCH); OMB Control No.: 0572–0146

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, as amended, the Rural Utilities Service, an agency of the United States Department of Agriculture's (USDA), invites comments on this information collection for which the Agency intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by September 19, 2022 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search Field'' box, labeled ''Search for Rules, Proposed Rules, Notices or Supporting Documents,'' enter the following docket number: (RUS–22–AGENCY–0035). To submit or view public comments, click the ''Search'' button, select the ''Documents'' tab, then select the following document title: (60-Day Notice of Proposed Information Collection: Special Evaluation Assistance for Rural Communities and Households Program (SEARCH); OMB Control No.: 0572–0146) from the ''Search Results'' and select the ''Comment'' button. Before inputting your comments, you may also review the ''Commenter's Checklist'' (optional). Insert your comments under the ''Comment'' title, click ''Browse'' to attach files (if available). Input your email address and select ''Submit Comment.''

Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

Other Information: Additional information about Rural Development and its programs is available on the internet at *https://www.rd.usda.gov.*

All comments will be available for public inspection online at the Federal eRulemaking Portal (*https://www.regulations.gov*).

FOR FURTHER INFORMATION CONTACT: Crystal Pemberton, Management

Analyst Branch 1, Rural Development Innovation Center—Regulations Management Division, United States Department of Agriculture, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 260–8621, Email: *Crystal.Pemberton@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 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 the Agency is submitting to OMB for an extension.

Title: Special Evaluation Assistance for Rural Communities and Household Program (SEARCH).

OMB Control Number: 0572–0146.

Expiration Date of Approval: November 30, 2022.

Type of Request: Revision of currently approved package.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 hours per responses.

Respondents: Public Bodies; Indian Tribes; Not-for-Profit Organizations.

Estimated Number of Respondents: 88.

Estimated Number of Responses per Respondent: 22.

Estimated Total Annual Burden of Respondents: 6,263.

Abstract: The Food, Conservation and Energy Act of 2008, Public Law 110–246 (Farm Bill) amended Section 306(a)(2) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926 (a)(2)). The amendment created a grant program to make Special Evaluation Assistance for Rural Communities and Households (SEARCH) Program grants. Under the SEARCH program, the Secretary may make predevelopment and planning grants to public or quasi-public agencies, organizations operated on a not-for-profit basis or Indian tribes on Federal and State reservations and other federally recognized Indian tribes. The grant recipients shall use the grant funds for feasibility studies, design assistance, and development of an application for financial assistance to financially distressed communities in rural areas with populations of 2,500 or fewer inhabitants for water and waste disposal projects as authorized in Sections 306(a)(1), 306(a)(2) and 306(a)(24) of the CONACT. The reporting burden covered by this collection of information consists of forms, documents and written burden to support a request for funding for a SEARCH loan.

Comments are invited on:

(a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption 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 on other forms and information technology.

Copies of this information collection can be obtained from Crystal Pemberton, Management Analyst Branch 1, Rural Development Innovation Center—Regulations Management Division, United States Department of Agriculture, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 260–8621, Email: *Crystal.Pemberton@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2022–15614 Filed 7–20–22; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–22–TELECOM–0046]

60-Day Notice of Proposed Information Collection: Broadband Grant Program; OMB Control No.: 0572–0127

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 the Rural Utilities Service (RUS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by September 19, 2022 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search Field'' box, labeled ''Search for Rules, Proposed Rules, Notices or Supporting Documents,'' enter the following docket number: (RUS–22–TELECOM–0046). To submit or view public comments, click the ''Search'' button, select the ''Documents'' tab, then select the following document title: (60-Day Notice of Proposed Information Collection: Broadband Grant Program; OMB Control No.: 0572–0127) from the ''Search Results'' and select the ''Comment'' button. Before inputting your comments, you may also review the ''Commenter's Checklist'' (optional). Insert your comments under the ''Comment'' title, click ''Browse'' to attach files (if available). Input your email address and select ''Submit Comment.''

Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

Other Information: Additional information about Rural Development and its programs is available on the internet at *https://www.rd.usda.gov*.

All comments will be available for public inspection online at the Federal eRulemaking Portal (*https://www.regulations.gov*).

FOR FURTHER INFORMATION CONTACT: Kimble Brown, Rural Development Innovation Center—Regulations Management Division, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250, Telephone: 202–720–6780, Email: *Kimble.Brown@usda.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that the Agency is submitting to OMB for extension.

Title: Broadband Grant Program.

OMB Control Number: 0572–0127.

Type of Request: Extension of a currently approved information collection.

Abstract: The provision of broadband transmission service is vital to the economic development, education, health, and safety of rural Americans.

To further this objective, RUS provides financial assistance in the form of grants to eligible entities that propose, on a ''community-oriented connectivity'' basis, to provide broadband transmission service that fosters economic growth and delivers enhanced educational, health care, and public safety services to extremely rural, lower income communities. The Agency gives priority to rural areas that it believes have the greatest need for broadband transmission services. Grant authority is utilized to deploy broadband infrastructure to extremely rural, lower income communities on a ''community-oriented connectivity'' basis. The ''community-oriented connectivity'' concept integrates the deployment of broadband infrastructure with the practical, everyday uses and applications of the facilities. This broadband access is intended to promote economic development and provide enhanced educational and health care opportunities. The Agency provides financial assistance to eligible entities that are proposing to deploy broadband transmission service in rural communities where such service does not currently exist and who will connect the critical community facilities including the local schools, libraries, hospitals, police, fire and rescue services and who will operate a community center that provides free and open access to residents. The reporting burden covered by this collection of information consists of forms, documents and written burden to support an application request for grant funding.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 126.5 hours per response.

Respondents: Public bodies, commercial companies, cooperatives, nonprofits, Indian tribes, and limited dividend or mutual associations and must be incorporated or a limited liability company.

Estimated Number of Respondents: 73.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12,286.

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.

Copies of this information collection can be obtained from Kimble Brown, Rural Development Innovation Center—Regulations Management Division, at (202) 720–6780. Email: *Kimble Brown@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 A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2022–15587 Filed 7–20–22; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2128]

Reorganization of Foreign-Trade Zone 221 Under Alternative Site Framework, Mesa, Arizona

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the City of Mesa, grantee of Foreign-Trade Zone 221, submitted an application to the Board (FTZ Docket B–10–2022, docketed March 28, 2022) for authority to reorganize under the ASF with a service area of the City of Mesa, Arizona, adjacent to the Phoenix Customs and Border Protection port of entry, and FTZ 221's existing Site 1 would be categorized as a magnet site;

Whereas, notice inviting public comment was given in the **Federal Register** (87 FR 19475, April 4, 2022) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 221 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone.

Dated: July 15, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance, Alternate Chairperson, Foreign-Trade Zones Board.

[FR Doc. 2022–15635 Filed 7–20–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States Travel and Tourism Advisory Board: Request for Applications for Membership

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of an opportunity to apply for membership on the United States Travel and Tourism Advisory Board.

SUMMARY: The Department of Commerce is currently seeking applications for membership on the United States Travel and Tourism Advisory Board (Board). The purpose of the Board is to advise the Secretary of Commerce on matters relating to the U.S. travel and tourism industry.

DATES: Applications for immediate consideration for membership must be received by the National Travel and Tourism Office by 5:00 p.m. Eastern Daylight Time (EDT) on Friday, September 16, 2022. The International Trade Administration (ITA) will continue to accept applications under this notice for two years from the deadline to fill any vacancies.

ADDRESSES: Please submit application information by email to *TTAB@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Aguinaga, National Travel and Tourism Office, U.S. Department of Commerce; telephone: 202–482–2404; email: *TTAB@trade.gov.*

SUPPLEMENTARY INFORMATION: The United States Travel and Tourism Advisory Board (Board) is established under 15 U.S.C. 1512 and under the Federal Advisory Committee Act, as amended, 5 U.S.C. app. (FACA). The Board advises the Secretary of Commerce on government policies and programs that affect the U.S. travel and tourism industry. The Board acts as a liaison to the stakeholders represented by the membership, consulting with them on current and emerging issues in the industry to support sustainable growth in travel and tourism.

The National Travel and Tourism Office is accepting applications for Board members. Members shall be Chief Executive Officers or senior executives from U.S. companies, U.S. organizations, or U.S. entities in the travel and tourism sectors representing a broad range of products and services, company sizes, and geographic locations. For eligibility purposes, a ''U.S. company'' is a for-profit firm that is incorporated in the United States (or an unincorporated U.S. firm with its principal place of business in the United States) that is controlled by U.S. citizens or by other U.S. companies. A company is not a U.S. company if 50 percent plus one share of its stock (if a corporation, or a similar ownership interest of an unincorporated entity) is known to be controlled, directly or indirectly, by non-U.S. citizens or non-U.S. companies. For eligibility purposes, a ''U.S. organization'' is an organization, including trade associations and nongovernmental organizations (NGOs), established under the laws of the United States, that is controlled by U.S. citizens, by another U.S. organization (or organizations), or by a U.S. company (or companies), as determined based on its board of directors (or comparable governing body), membership, and funding sources, as applicable. For eligibility purposes, a U.S. entity is a tourism-related entity that can demonstrate U.S. ownership or control, including but not limited to state and local tourism marketing entities, state government tourism offices, state and/or local government-supported tourism marketing entities, and multi-state tourism marketing entities.

Members of the Board will be selected in accordance with applicable Department of Commerce guidelines based on their ability to carry out the objectives of the Board as set forth in the Board's charter and in a manner that ensures that the Board is balanced in terms of geographic diversity, diversity in size of company or organization to be represented, and representation of a broad range of services in the travel and tourism industry. Each member shall serve for two years from the date of the appointment and at the pleasure of the Secretary of Commerce.

Members serve in a representative capacity, representing the views and interests of their particular business sector, and not as Special Government employees. Members will receive no compensation for their participation in Board activities. Members participating in Board meetings and events will be responsible for their travel, living, and other personal expenses. Meetings will be held regularly and, to the extent practical, not less than twice annually, usually in Washington, DC or virtually.

To be considered for membership, please provide the following information to the address listed in the **ADDRESSES** section:

1. The name and title of the individual requesting consideration.
2. A sponsor letter from the applicant on his or her company/organization/entity letterhead or, if the applicant is to represent a company/organization/entity other than his or her employer, a letter from the company/organization/entity to be represented, containing a brief statement of why the applicant should be considered for membership on the Board. This sponsor letter should also address the applicant's travel and tourism-related experience.
3. The applicant's personal resume.
4. An affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.
5. If the applicant is to represent a company, information regarding the control of the company, including the stock holdings as appropriate, signifying compliance with the criteria set forth above.
6. If the applicant is to represent an organization, information regarding the control of the organization, including the governing structure, members, and revenue sources as appropriate, signifying compliance with the criteria set forth above.
7. If the applicant is to represent a tourism-related entity, the functions and responsibilities of the entity, and information regarding the entity's U.S. ownership or control, signifying compliance with the criteria set forth above.
8. The company's, organization's, or entity's size, product or service line and major markets in which the company, organization, or entity operates.
9. A brief statement describing how the applicant will contribute to the work of the Board based on his or her unique experience and perspective (not to exceed 100 words).

Dated: July 18, 2022.

Julie Heizer,

Acting Director, National Travel and Tourism Office.

[FR Doc. 2022–15613 Filed 7–20–22; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC179]

Marine Mammals; File No. 26667

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the North Slope Borough Department of Wildlife Management (Taqulik Hepa, Responsible Party), P.O. Box 69, Barrow, AK 99723 has applied in due form for a permit to receive, import, and export marine mammal parts for scientific research.

DATES: Written, telefaxed, or email comments must be received on or before August 22, 2022.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 26667 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 26667 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Shasta McClenahan, Ph.D., (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR

part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222 through 226).

The applicant proposes to collect, receive, import, and export biological samples from pinnipeds and cetaceans annually worldwide for scientific research. Pinniped samples may include up to 100 each of bearded (*Erignathus barbatus*) and ringed (*Phoca hispida*), 50 spotted (*P. larga*), and 25 ribbon (*Histriophoca fasciata*) seals. Cetacean samples may include up to 10 harbor porpoise (*Phocoena phocoena*), and 100 beluga (*Delphinapterus leucas*), 80 bowhead (*Balaena mysticetus*), 10 minke (*Balaenoptera acutorostrata*), and 20 gray (*Eschrichtius robustus*) whales. The primary source of samples will be subsistence harvested marine mammals in Alaska; however, additional sources of samples may include foreign subsistence harvests, marine mammal strandings in foreign countries, and other foreign and domestic authorized researchers. The requested duration of the permit is 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 14, 2022.

Amy Sloan,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–15574 Filed 7–20–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB798]

Marine Mammals; File No. 26254

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Alaska Department of Fish & Game (ADF&G), 1300 College Road, Fairbanks, AK 99701 (Responsible Party: Lori Quakenbush), has applied in due form for a permit to conduct research on ice seals in Alaska.

DATES: Written, telefaxed, or email comments must be received on or before August 22, 2022.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 26254 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 26254 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Sara Young or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222 through 226).

On February 14, 2022, notice was published in the **Federal Register** (87 FR 8235) that a request for an amendment to a scientific research permit for research on ice seals had been submitted by the above-named applicant. Following the close of the public comment period, the applicant made a substantive change to their application request; therefore, we are opening an additional public comment period to allow review and comment on the revised permit application.

The applicant requests a permit to conduct scientific research on spotted (*Phoca largha*), ringed (*Pusa hispida*), bearded (*Erignathus barbatus*), and ribbon (*Histriophoca fasciata*) seals in the Bering, Chukchi, and Beaufort seas of Alaska. The purpose of this research is to monitor the status and health of seal species by analyzing samples from the subsistence harvest and by documenting movements and habitat use by tracking animals with satellite transmitters. In addition to sampling harvested seals, the applicant would capture up to 50 bearded seals, 20 ribbon seals, 50 ringed seals, and 50 spotted seals per year that would be sedated, measured, sampled (*e.g.,* blood and skin), flipper tagged, and fitted with transmitters. The applicant requests to capture an additional 50 bearded seals, 20 ribbon seals, 50 ringed seals, and 50 spotted seals per year that would be measured, sampled, and flipper tagged but not fitted with external instruments. The applicant also requests permission to harass non-target seals of all four pinniped species as well as beluga whales (*Delphinapterus leucas*). The applicant requests up to five mortalities per species per year for pinniped captures and one mortality of a beluga whale annually due to accidental entanglement in pinniped capture nets. The applicant also requests to collect and receive samples primarily from U.S. subsistence hunted pinnipeds as well as import and export unlimited samples from up to 5,000 animals of each ice seal species as well as unlimited samples from 100 unidentified pinnipeds. Samples would be imported from primarily Russia, Canada, Svalbard (Norway) and exported to Canada for analyses. The permit would be valid for 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 18, 2022.

Amy Sloan,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–15575 Filed 7–20–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC195]

Marine Mammals; File No. 26329

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Brandon Southall, Ph.D., Southall Environmental Associates, Inc., 9099 Soquel Drive, Suite 8, Aptos, CA 95076, has applied in due form for a permit to conduct research or enhancement on 17 species of cetaceans including endangered blue (*Balaenoptera musculus*), fin (*B. physalus*), humpback (*Megaptera novaeangliae*), and sperm (*Physeter macrocephalus*) whales.

DATES: Written, telefaxed, or email comments must be received on or before August 22, 2022.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 26329 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 26329 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Sara Young, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant proposes to study behavioral responses of cetaceans in California waters. Researchers seek to identify key characteristics of species-typical calling, diving, feeding, social, and movement behavior in cetaceans, and under what conditions and contexts these behaviors are affected by human noise disturbance. Researchers would approach cetaceans by vessel for observations, suction-cup tagging, collection of sloughed skin, acoustic playbacks, prey mapping, photo-identification, and unintentional harassment. Except for playbacks, some research activities would occur in conjunction with separately authorized U.S. Navy operations. Five pinniped species, including endangered Guadalupe fur seals (*Arctocephalus townsendi*), may be unintentionally harassed during fieldwork. Take numbers for each species can be found in the application's take table. The permit would be valid for five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 18, 2022.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–15591 Filed 7–20–22; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Request for Information on Climate-Related Financial Risk

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is extending the comment period for the Request for Information on Climate-Related Financial Risk) (''RFI'') that was published on June 8, 2022 in the **Federal Register**.

DATES: The comment period for the RFI is extended until October 7, 2022.

ADDRESSES: You may submit comments, identified by the name of the release, ''Climate-Related Financial Risk RFI'', by any of the following methods:

- CFTC Comments Portal: *https://comments.cftc.gov.* Select the ''Submit Comments'' link for this release and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (''FOIA''), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain responses to the Request for Information will be retained in the public comment file and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Abigail S. Knauff, (202) 418–5123, *aknauff@cftc.gov,* Deputy, Climate Risk Unit, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: On June 2, 2022, the Commission approved for publication in the **Federal Register** the RFI. The RFI was published in the **Federal Register** on June 8, 2022, with a 60-day comment period scheduled to close on August 8, 2022.[2] Based on the broad range of topics addressed in the RFI, the Commission has determined to extend the comment period by 60 days.

[1] 17 CFR 145.9.

[2] 87 FR 34856 (June 2, 2022).

Accordingly, the comment period for the RFI is open through October 7, 2022.

Issued in Washington, DC, on July 18, 2022, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix To Request for Information on Climate-Related Financial Risk—Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Stump voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2022–15621 Filed 7–20–22; 8:45 am]

BILLING CODE 6531–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee (DoDWC); Notice of Federal Advisory Committee Meetings

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of closed Federal Advisory Committee meetings.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meetings of the DoDWC will take place.

DATES:

Tuesday, August 9, 2022 from 10:00 a.m. to 11:00 a.m. and will be closed to the public.

Tuesday, August 23, 2022 from 10:00 a.m. to 1:00 p.m. and will be closed to the public.

Tuesday, September 6, 2022 from 10:00 a.m. to 10:30 a.m. and will be closed to the public.

Tuesday, September 20, 2022 from 10:00 a.m. to 12:00 p.m. and will be closed to the public.

Tuesday, October 4, 2022 from 10:00 a.m. to 12:00 p.m. and will be closed to the public.

Tuesday, October 18, 2022 from 10:00 a.m. to 12:30 p.m. and will be closed to the public.

Tuesday, November 1, 2022 from 10:00 a.m. to 11:00 a.m. and will be closed to the public.

ADDRESSES: The closed meetings will be held by teleconference.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Fendt, (571) 372–1618 (voice), *karl.h.fendt.civ@mail.mil.* (email), 4800 Mark Center Drive, Suite 05G21, Alexandria, Virginia 22350 (mailing address). Any agenda updates can be found at the DoDWC's official website: *https://wageandsalary.dcpas.osd.mil/BWN/DODWC/.*

SUPPLEMENTARY INFORMATION: These meetings are being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of these meetings is to provide independent advice and recommendations on matters relating to the conduct of wage surveys and the establishment of wage schedules for all appropriated fund and non-appropriated fund areas of blue-collar employees within the DoD.

Agendas

August 9, 2022

Opening Remarks by Chair and DFO.

Reviewing survey results and/or survey specifications for the following Appropriated Fund areas:

1. Any items needing further clarification or action from the previous agenda.
2. Wage Schedule (Full Scale) for the Hawaii wage area (AC–044).
3. Wage Schedule (Full Scale) for the Central & Western Massachusetts wage area (AC–069).
4. Wage Schedule (Full Scale) for the Southwestern Wisconsin wage area (AC–149).
5. Wage Schedule (Wage Change) for the Augusta, Georgia wage area (AC–038).
6. Wage Schedule (Wage Change) for the Macon, Georgia wage area (AC–041).
7. Wage Schedule (Wage Change) for the Southeastern Washington-Eastern Oregon wage area (AC–144).
8. Survey Specifications for the New Orleans, Louisiana wage area (AC–061).
9. Special Pay—Macon, Georgia Special Rates.
10. Any items needing further clarification from this agenda may be discussed during future scheduled meetings.

Closing Remarks by Chair.

August 23, 2022

Opening Remarks by Chair and DFO.

Reviewing survey results and/or survey specifications for the following Nonappropriated Fund areas:

1. Any items needing further clarification or action from the previous agenda.
2. Wage Schedule (Full Scale) for the Arapahoe-Denver, Colorado wage area (AC–084).
3. Wage Schedule (Full Scale) for the El Paso, Colorado wage area (AC–085).
4. Wage Schedule (Full Scale) for the Laramie, Wyoming wage area (AC–087).
5. Wage Schedule (Full Scale) for the New London, Connecticut wage area (AC–136).
6. Wage Schedule (Full Scale) for the Snohomish, Washington wage area (AC–141).
7. Wage Schedule (Full Scale) for the Pierce, Washington wage area (AC–143).
8. Wage Schedule (Full Scale) for the Newport, Rhode Island wage area (AC–167).
9. Wage Schedule (Wage Change) for the Hennepin, Minnesota wage area (AC–015).
10. Wage Schedule (Wage Change) for the Grand Forks, North Dakota wage area (AC–017).
11. Wage Schedule (Wage Change) for the Davis-Weber-Salt Lake, Utah wage area (AC–018).
12. Wage Schedule (Wage Change) for the Ada-Elmore, Idaho wage area (AC–038).
13. Wage Schedule (Wage Change) for the Cascade, Montana wage area (AC–040).
14. Wage Schedule (Wage Change) for the Spokane, Washington wage area (AC–043).
15. Survey Specifications for the Brevard, Florida wage area (AC–061).
16. Survey Specifications for the Hillsborough, Florida wage area (AC–119).
17. Survey Specifications for the Miami-Dade, Florida wage area (AC–158).
18. Survey Specifications for the Duval, Florida wage area (AC–159).
19. Survey Specifications for the Monroe, Florida wage area (AC–160).

Reviewing survey results and/or survey specifications for the following Appropriated Fund areas:

20. Wage Schedule (Full Scale) for the Central and Northern Maine area (AC–064).
21. Wage Schedule (Full Scale) for the Asheville, North Carolina wage area (AC–098).
22. Wage Schedule (Full Scale) for the Southwestern Oregon wage area (AC–113).
23. Wage Schedule (Full Scale) for the Austin, Texas wage area (AC–129).
24. Wage Schedule (Full Scale) for the Corpus Christi, Texas wage area (AC–130).
25. Wage Schedule (Wage Change) for the Duluth, Minnesota wage area (AC–074).
26. Wage Schedule (Wage Change) for the San Antonio, Texas wage area (AC–135).
27. Wage Schedule (Wage Change) for the Milwaukee, Wisconsin wage area (AC–148).

28. Survey Specifications for the Richmond, Virginia wage area (AC–141).

29. Special Pay—Southwestern Oregon Special Rates.

30. Any items needing further clarification from this agenda may be discussed during future scheduled meetings.

Closing Remarks by Chair.

September 6, 2022

Opening Remarks by Chair and DFO.

Reviewing survey results and/or survey specifications for the following Appropriated Fund areas:

1. Any items needing further clarification or action from the previous agenda.

2. Wage Schedule (Wage Change) for the Boise, Idaho wage area (AC–045).

3. Wage Schedule (Wage Change) for the Puerto Rico wage area (AC–151).

4. Special Pay—Puerto Rico Special Rates.

5. Any items needing further clarification from this agenda may be discussed during future scheduled meetings.

Closing Remarks by Chair.

September 20, 2022:

Opening Remarks by Chair and DFO.

Reviewing survey results and/or survey specifications for the following Nonappropriated Fund areas:

1. Any items needing further clarification or action from the previous agenda.

2. Wage Schedule (Full Scale) for the Frederick, Maryland wage area (AC–088).

3. Wage Schedule (Full Scale) for the Washington, District of Columbia wage area (AC–124).

4. Wage Schedule (Full Scale) for the Alexandria-Arlington-Fairfax, Virginia wage area (AC–125).

5. Wage Schedule (Full Scale) for the Prince William, Virginia wage area (AC–126).

6. Wage Schedule (Full Scale) for the Prince George's-Montgomery, Maryland wage area (AC–127).

7. Wage Schedule (Full Scale) for the Charles-St. Mary's, Maryland wage area (AC–128).

8. Wage Schedule (Full Scale) for the Anne Arundel, Maryland wage area (AC–147).

9. Wage Schedule (Wage Change) for the Burlington, New Jersey wage area (AC–071).

10. Wage Schedule (Wage Change) for the Kent, Delaware wage area (AC–076).

11. Wage Schedule (Wage Change) for the Richmond-Chesterfield, Virginia wage area (AC–082).

12. Wage Schedule (Wage Change) for the Morris, New Jersey wage area (AC–090).

Reviewing survey results and/or survey specifications for the following Appropriated Fund areas:

13. Wage Schedule (Full Scale) for the Alaska wage area (AC–007).

14. Wage Schedule (Full Scale) for the Montana wage area (AC–083).

15. Wage Schedule (Full Scale) for the Charleston, South Carolina wage area (AC–119).

16. Wage Schedule (Wage Change) for the Utah wage area (AC–139).

17. Wage Schedule (Wage Change) for the Spokane, Washington wage area (AC–145).

18. Any items needing further clarification from this agenda may be discussed during future scheduled meetings.

Closing Remarks by Chair.

October 4, 2022

Opening Remarks by Chair and DFO.

Reviewing survey results and/or survey specifications for the following Nonappropriated Fund areas:

1. Any items needing further clarification or action from the previous agenda.

2. Survey Specifications for the Sacramento, California wage area (AC–002).

3. Survey Specifications for the San Joaquin, California wage area (AC–008).

4. Survey Specifications for the Bernalillo, New Mexico area (AC–019).

5. Survey Specifications for the Dona Ana, New Mexico wage area (AC–021).

6. Survey Specifications for the El Paso, Texas wage area (AC–023).

Reviewing survey results and/or survey specifications for the following Appropriated Fund areas:

7. Wage Schedule (Full Scale) for the Cedar Rapids-Iowa City, Iowa wage area (AC–052).

8. Wage Schedule (Full Scale) for the Portland, Oregon area (AC–112).

9. Wage Schedule (Full Scale) for the Wichita Falls, Texas-Southwestern Oklahoma wage area (AC–138).

10. Wage Schedule (Full Scale) for the Madison, Alabama wage area (AC–147).

11. Wage Schedule (Wage Change) for the Dothan, Alabama wage area (AC–003).

12. Wage Schedule (Wage Change) for the Washington, District of Columbia wage area (AC–027).

13. Wage Schedule (Wage Change) for the Columbus, Georgia wage area (AC–040).

14. Wage Schedule (Wage Change) for the Charlotte, North Carolina wage area (AC–100).

15. Wage Schedule (Wage Change) for the Oklahoma City, Oklahoma wage area (AC–109).

16. Wage Schedule (Wage Change) for the Tulsa, Oklahoma wage area (AC–111).

17. Wage Schedule (Wage Change) for the Pittsburgh, Pennsylvania wage area (AC–116).

18. Special Pay—Portland, Oregon Special Rates.

19. Special Pay—Missouri River Power Rate Schedule.

20. Any items needing further clarification from this agenda may be discussed during future scheduled meetings.

Closing Remarks by Chair.

October 18, 2022

Opening Remarks by Chair and DFO.

Reviewing survey results and/or survey specifications for the following Nonappropriated Fund areas:

1. Any items needing further clarification or action from the previous agenda.

2. Wage Schedule (Full Scale) for the Los Angeles, California wage area (AC–130).

3. Wage Schedule (Full Scale) for the Orange, California wage area (AC–131).

4. Wage Schedule (Full Scale) for the Ventura, California wage area (AC–132).

5. Wage Schedule (Full Scale) for the Riverside, California wage area (AC–133).

6. Wage Schedule (Full Scale) for the San Bernardino, California wage area (AC–134).

7. Wage Schedule (Full Scale) for the Santa Barbara, California wage area (AC–135).

8. Wage Schedule (Full Scale) for the Guam wage area (AC–150).

9. Wage Schedule (Wage Change) for the Monterey, California wage area (AC–003).

10. Wage Schedule (Wage Change) for the Kern, California wage area (AC–010).

11. Wage Schedule (Wage Change) for the San Diego, California wage area (AC–054).

12. Wage Schedule (Wage Change) for the Solano, California wage area (AC–059).

Reviewing survey results and/or survey specifications for the following Appropriated Fund areas:

13. Wage Schedule (Full Scale) for the Little Rock, Arkansas wage area (AC–011).

14. Wage Schedule (Full Scale) for the Boston, Massachusetts wage area (AC–068).

15. Wage Schedule (Wage Change) for the Albany, Georgia wage area (AC–036).

16. Wage Schedule (Wage Change) for the Northwestern Michigan wage area (AC–071).

17. Wage Schedule (Wage Change) for the Scranton-Wilkes Barre, Pennsylvania wage area (AC–117).

18. Survey Specifications for the Denver, Colorado wage area (AC–022).

19. Survey Specifications for the Jacksonville, Florida wage area (AC–030).

20. Survey Specifications for the Detroit, Michigan wage area (AC–070).

21. Survey Specifications for the Southeastern North Carolina wage area (AC–101).

22. Survey Specifications for the Columbus, Ohio wage area (AC–106).

23. Survey Specifications for the Narragansett Bay, Rhode Island wage area (AC–118).

24. Special Pay—Boston, Massachusetts Special Rates.

25. Any items needing further clarification from this agenda may be discussed during future scheduled meetings.

Closing Remarks by Chair.

November 1, 2022

Opening Remarks by Chair and DFO.

Reviewing survey results and/or survey specifications for the following Nonappropriated Fund areas:

1. Any items needing further clarification or action from the previous agenda.

2. Survey Specifications for the Lauderdale, Mississippi wage area (AC–001).

3. Survey Specifications for the Lowndes, Mississippi wage area (AC–004).

4. Survey Specifications for the Rapides, Louisiana wage area (AC–024).

5. Survey Specifications for the Caddo-Bossier, Louisiana wage area (AC–025).

6. Survey Specifications for the Chatham, Georgia wage area (AC–037).

7. Survey Specifications for the Dougherty, Georgia wage area (AC–046).

8. Survey Specifications for the Lowndes, Georgia wage area (AC–047).

9. Any items needing further clarification from this agenda may be discussed during future scheduled meetings.

Closing Remarks by Chair.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b(c)(4), the DoD has determined that the meetings shall be closed to the public. The Under Secretary of Defense for Personnel and .Readiness, in consultation with the DoD Office of General Counsel, has determined in writing that each of these meetings is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Written Statements: Pursuant to section 10(a)(3) of the Federal Advisory Committee Act and 41 CFR 102–3.140, interested persons may submit written statements to the Designated Federal Officer for the DoDWC at any time. Written statements should be submitted to the Designated Federal Officer at the email or mailing address listed in the **FOR FURTHER INFORMATION CONTACT** section. If statements pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five (5) business days prior to the meeting in question. Written statements received after this date may not be provided to or considered by the DoDWC until its next meeting. The Designated Federal Officer will review all timely submitted written statements and provide copies to all the committee members before the meeting that is the subject of this notice.

Dated: July 18, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–15630 Filed 7–20–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0097]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; International Computer and Information Literacy Study (ICILS 2023) Main Study Questionnaire Revision

AGENCY: Institute of Educational Studies (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before August 22, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Reginfo.gov provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, 202–245–6347.

SUPPLEMENTARY INFORMATION: The Department in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed ICR that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: International Computer and Information Literacy Study (ICILS 2023) Main Study Questionnaire Revision.

OMB Control Number: 1850–0929.

Type of Review: Revision of a currently approved information collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 9,860.

Total Estimated Number of Annual Burden Hours: 4,817.

Abstract: The International Computer and Information Literacy Study (ICILS) is a computer-based international assessment of eighth-grade students' computer and information literacy (CIL) skills. ICILS was first administered internationally in 2013 in 21 education

systems and again in 2018, when the United States participated for the first time. Our participation in this study has provided data on students' skills and experience using technology to investigate, create, and communicate, and provided a comparison of U.S. student performance and technology access and use with those of the international peers. The next administration of ICILS will be in 2023. The 2023 study will allow the U.S. to begin monitoring the progress of its students compared to that of other nations and to provide data on factors that may influence student computer and information literacy skills. The data collected through ICILS will provide valuable information with which to understand the nature and extent of the ''digital divide'' and has the potential to inform understanding of the relationship between technology skills and experience and student performance in other core subject areas. ICILS is conducted by the International Association for the Evaluation of Educational Achievement (IEA), an international collective of research organizations and government agencies that create the assessment framework, assessment, and background questionnaires. The IEA decides and agrees upon a common set of standards and procedures for collecting and reporting ICILS data, and defines the study timeline, all of which must be followed by all participating countries. As a result, ICILS is able to provide a reliable and comparable measure of student skills in participating countries. In the U.S., the National Center for Education Statistics (NCES) conducts this study and works with the IEA and RTI International to ensure proper implementation of the study and adoption of practices in adherence to the IEA's standards. Participation in ICILS will allow NCES to meet its mandate of acquiring and disseminating data on educational activities and student achievement in the United States compared with foreign nations [The Educational Sciences Reform Act of 2002 (ESRA 2002) 20 U.S.C. 9543]. The U.S. ICILS main study will be conducted from March through May 2023 and will involve a nationally-representative sample of at least 3,000 eighth-grade students from a minimum of 150 schools. Because ICILS is a collaborative effort among many parties, the United States must adhere to the international schedule set forth by the IEA, including the availability of final field test and main study plans as well as draft and final questionnaires. In order to meet the international data collection schedule and to align with recruitment for other NCES studies (*e.g.,* TIMSS), approval for the main study sampling, recruitment, and data collection activities was approved in April 2022 (OMB# 1850–0929 v9). This request is for approval for the (1) revised study revision timeline; (2) updated screen shots of the study portal; (3) changes to the main study contact materials; and (4) addition of COVID-related items in the questionnaires. If necessary, a final change memo will be submitted in December 2022 with the IEA-approved adapted main study questionnaire. Changes are described below and are included in the supporting documentation.

Dated: July 18, 2022.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–15577 Filed 7–20–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Committee on Foreign Medical Education and Accreditation

AGENCY: Department of Education, National Committee on Foreign Medical Education and Accreditation (NCFMEA).

ACTION: Notice; correction.

SUMMARY: On July 6, 2022, the Department of Education published a **Federal Register** notice seeking nominations of medical experts for appointment to fill three NCFMEA member positions. This notice corrects the date that the term of service for the three appointed positions will expire.

DATES: This correction is applicable July 21, 2022.

FOR FURTHER INFORMATION CONTACT: Karen Akins, Committee Management Officer, U.S. Department of Education. Telephone: (202) 401–3677. Email: *Karen.Akins@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 July 6, 2022, the Department published a notice in the **Federal Register** (87 FR 40203) seeking nominations of medical experts for appointment of members to serve on the NCFMEA. The July 6, 2022 notice incorrectly stated that the term of service for the three approved positions would expire on September 30, 2022; however, the correct expiration date is September 30, 2028. Accordingly, the Department is correcting the date in the notice.

Program Authority: 20 U.S.C. 1002.

Correction: In FR Doc 2022–14302 appearing on page 40203 in the **Federal Register** of July 6, 2022 (87 FR 40203), we make the following correction:

1. On page 40203, in the first column, in the **SUMMARY** section, remove the number ''2022'' and add, in its place, the number ''2028''.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and the July 6, 2022 notice 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 the Department published in the **Federal Register**.

Miguel A. Cardona,

Secretary of Education.

[FR Doc. 2022–15752 Filed 7–20–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Bonneville Power Administration, Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE), Bonneville Power Administration (BPA), has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its collection, titled Bonneville Power Administration (BPA) Security, OMB Control Number 1910–5188. The proposed collection will be used to determine access to BPA facilities and report incidents of damage or loss. This information is used to manage and oversee personnel and physical security programs.

DATES: Comments regarding this proposed information collection must

be received on or before August 22, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 881–8585.

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. Written comments may be sent to Bonneville Power Administration, Attn: Stephanie Noell, Privacy Program, CGI–7, P.O. Box 3621, Portland, OR 97208–3621, or by email at *privacy@bpa.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Attn: Stephanie Noell, Privacy Program, by email at *privacy@bpa.gov,* or by phone at 503–230–3881.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1910–5188; (2) *Information Collection Request Title:* Security; (3) *Type of Request:* Extension; (4) *Purpose:* This information collection is associated with BPA's management and oversight of access to BPA offices and facilities in order to provide measures to safeguard personnel; to prevent unauthorized access to equipment, facilities, material and documents; to safeguard against espionage, sabotage, and theft; the likely respondents include BPA employees, contractors, and the public: BPA F 1400.22a—Other Utility/Contractor/Vendor Worker Access Request, BPA F 1400.22e—Non-Government Employee Data in HRMIS, BPA F 5630.04e—Security Privilege Request—for BPA Control Centers, BPA F 5632.01e—Security Incident Report, BPA F 5632.08e—Unclassified Visits and Assignments—Foreign Nationals Registration (Short Form), BPA F 5632.09e—Personal Identity Verification (PIV) Request for LSSO/Smart Credential, BPA F 5632.11a—BPA Visitor(s) Access Request—with continuation page, BPA F 5632.11e—BPA Visitor(s) Access Request, BPA F 5632.12e—Evidence/Chain of Custody Document, BPA F 5632.18e—Crime Witness Telephone Report, BPA F 5632.27e—Badge Replacement Request, BPA F 5632.30e—PIN Code Request, BPA F 5632.32e—Card Key Access Request; (5) *Estimated Number of Respondents:* 8,033; (6) *Annual Estimated Number of Respondents:* 8,033; (7) *Annual Estimated Number of Burden Hours:* 1,509; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0.

Statutory Authority: The Bonneville Project Act of 1937, 16 U.S.C. 832a; and the following additional authorities: 5 U.S.C. 1302, 2951, 3301, 3372, 4118, & 8347; 42 U.S.C. 2165 & 7101, *et seq.;* 5 CFR Chapter I parts 5 & 736, E.O. 10450, E.O. 12107, E.O. 12333, E.O. 13284, E.O. 13467, E.O. 13470, E.O. 13488, E.O. 13764, FERC Order No. 706, FIPS 201–2, and HSPD 12.

Signing Authority: This document of the Department of Energy was signed on July 12, 2022, by Candice D. Palen, Information Collection Clearance Manager, Bonneville Power Administration, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Portland, OR, on July 18, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–15582 Filed 7–20–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

General Applicability Waiver of Build America, Buy America Provisions as Applied to Recipients of Department of Energy Federal Financial Assistance

AGENCY: Office of the Secretary, U.S. Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: In accordance with the Build America, Buy America Act (''BABA'') this notice advises that the Department of Energy (''DOE'' or the ''Department'') is proposing a limited general applicability waiver (''Waiver'') to the Buy America Domestic Content Procurement Preference (as defined below) requirements of the Act. The Waiver will be effective for 180 days after its issuance (the ''Effective Period'') and will apply only to awards issued as a result of Funding Opportunity Announcements (''FOA'') released before May 14, 2022 (''applicable awards''). This Waiver will be effective solely with respect to applicable awards signed during the Effective Period; it will not apply to applicable awards signed before or after the Effective Period. Applicable Awards subject to this Waiver will not be required to incorporate the Buy America Preference, which mandates that all iron, steel, manufactured goods, and construction materials used in the award be manufactured domestically. DOE is seeking public comment as to whether this proposed Waiver is in the public interest, as it will provide the Department and its stakeholders a reasonable adjustment period to implement BABA in a more thorough, effective, and exacting manner.

DATES: Comments on the proposed Waiver set out in this document are due on or before August 5, 2022. This proposed Waiver applies to applicable awards for a period of 180 days after its implementation, unless, after reviewing the public comments, DOE publishes a subsequent notice in the **Federal Register** explaining any changes to its determination to issue this Waiver.

ADDRESSES: Interested persons are invited to submit comments on this proposed general applicability waiver. To receive consideration as public comments, comments must be submitted through the method(s) listed. All submissions must refer to the listed docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to *BuyAmericanAPWaiver@ee.doe.gov.*

2. *No facsimile comments.* Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Bonnell, U.S. Department of Energy, Office of Management, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1747. Email: *BuyAmericanAPWaiver@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Build America, Buy America

The Build America, Buy America Act, was enacted under Division G, Title IX of President Biden's Infrastructure Investment and Jobs Act, a once-in-a-generation opportunity to fix our crumbling infrastructure. The President also views this investment as an opportunity to create domestic manufacturing jobs, strengthen supply chains, and help lower costs. To that end, BABA attaches a sweeping series of

requirements to certain Federally-assisted projects, with the goal of fomenting a resilient domestic supply chain and a manufacturing supply for a number of critical materials both for nascent and existing industries in the United States.

Per section 70914 of the IIJA, Agencies may not obligate funds for an ''infrastructure project'' unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States. Further, section 70912 of the IIJA provides an extensive list of items that fall under the definition of ''infrastructure,'' and defines ''project'' as ''the construction, alteration, maintenance, or repair of infrastructure in the United States.'' Effectively, this requirement mandates that Federal agencies must carefully review the particulars of a proposed project funded by Federal financial assistance to ensure that any required iron, steel, manufactured products, and/or construction materials were produced domestically (''Buy America''). This necessitates the creation of internal processes to properly vet each funded project to determine Buy America applicability, as well as external, recipient-facing processes that will allow recipients to properly understand, comply with, and report on the obligations established by the Preference. Federal agencies are standing up processes to implement and track these Buy America requirements to ensure that Federally-funded infrastructure projects are carried out using American-made goods.

Advancing these objectives will require a long-term, dedicated approach; there are gaps in our manufacturing base and product knowledge base that will not be filled overnight, but which the BABA will help us fill and strengthen over time. The ultimate measure of success will be significant investment in America's infrastructure while contemporaneously maximizing the use of American-made goods.

II. DOE Implementation Progress Thus Far

Since the passage of the IIJA on November 15, 2021, DOE has—alongside several other Federal agencies—worked closely with OMB's Made In America Office to meet necessary statutory requirements and to provide feedback to help OMB generate guidance and scope out the specific details of BABA's application. This process began with an attempt to identify—using guidance issued by OMB in its M–22–08 Memorandum, *Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act* [1]—programs which could be defined as ''infrastructure programs'' as that term is defined in the IIJA. Although the Department was able to identify some programs which would likely include infrastructure projects, the results of this analysis led to the determination that the Department does not have any programs which could categorically be defined as ''infrastructure programs.'' Rather, the vast majority of the Department's operations are structured in such a way that funding infrastructure projects is *possible,* but not necessarily *predictable.*

The Department therefore has been soliciting information from its internal programs to determine how to best meet the requirements of the BABA, as well as to determine any unique circumstances present in the Department's financial assistance programs that would require adjustments or additional consultation with the Made In America Office. The Department has attempted to establish some preliminary processes in an attempt to avoid the need for an adjustment period waiver. However, because of the nature of the Department's financial assistance operations, which may, but do not necessarily, involve infrastructure projects, additional time is needed to not only create processes that can pinpoint infrastructure projects to be funded through programs whose primary goal is research and development funding rather than infrastructure, but also to determine specific items that this waiver would cover. In other words, application of the Preference at the Department will need to be done on a case-by-case basis, which precludes the option of using a ''one size fits all'' approach to Buy America.

In addition, the Department has a significant number of awards that are slated to be made in the next several months which stem from Funding Opportunity Announcements that were released well before May 14, 2022. However, the Department does not want to unfairly burden applicants given that they were not granted the opportunity to incorporate the Buy America requirements into the planning of their award schedules and budgets from the outset.

[1] *https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-08.pdf.*

III. Waivers

The Act provides three bases upon which proposed waivers must be based, and it authorizes two distinct types of waivers. First, section 70914(b) of BABA permits Agencies or financial assistance recipients to submit waiver requests based on the following justifications:

1. Applying the domestic content procurement preference would be inconsistent with the public interest;

2. Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or

3. The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

Furthermore, BABA authorizes two distinct types of waivers: specific waiver requests, which are tailored to individual projects and are typically the kind that will be submitted by financial assistance recipients; and ''general applicability'' waivers (discussed in section 70914(d)), like the one proposed by this notice, which affect whole-cloth programs or agencies as a class. In the interests of transparency, any proposed waivers will be required to be submitted for public comment for a period of at least 15 days.

Any waivers will be narrowly tailored to achieve the specific needs of the project or projects without diluting the overall goals of BABA to fill supply chain gaps and focus more Federal funds toward American manufacturing. As a participant in a global economy, the United States will continue to rely on its trading partners and allies for products that either cannot be manufactured domestically at all or cannot be manufactured domestically without great difficulty. Therefore, the waivers represent a practical tool to ensure Federally-funded projects can proceed as normal without disruptions to timeline or budget. These waivers will also serve to send clear market signals, creating space for American firms to respond to the gaps identified by the waivers, eventually obviating the need for the waivers altogether.

IV. Public Interest in a General Applicability Waiver of Buy America Provisions

As the requirements of BABA are tied to the provision of several different varieties of Federal financial assistance utilized by the Department, and the Department obligates billions of dollars to financial assistance awards each fiscal year, a comprehensive and

effective implementation of BABA in the Department stands to play a substantial role in achieving the outcomes for which BABA was created. Moreover, while the Department is able to identify some programs which will be *more likely* to fund projects that include the construction, alteration, maintenance, or repair of public infrastructure in the United States, this is not the 'exclusively' focus on funding research, development, and demonstration of energy technology with no dedicated infrastructure focus. These programs will not be able to definitively identify the presence of infrastructure projects until: (1) applications under a funding opportunity announcement are received; and (2) projects are identified for selection. This is true even for programs that are more likely to include infrastructure work given that there are no programs administered by the Department which mandate infrastructure projects through their enabling statute(s).

The Department's financial assistance programs award approximately 2,000 grants and cooperative agreements each year and anticipate at least doubling this amount with awards for programs authorized under the IIJA. These programs span a multitude of industries, stakeholders, and entity types within the energy sector, which will ensure the effects of BABA are widespread, but which also presents unique challenges for the Department, as there is no ''one size fits all'' implementation framework that can be easily inserted into the Department's operations.

Many of the awards that the Department makes between now and the end of the FY22 fiscal year, which would be required to include the Preference, originated in Funding Opportunity Announcements that were issued long before the May 14, 2022 implementation date of BABA or the April 18, 2022 issuance of the M–22–11 memorandum from OMB, entitled *Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure* [2] (''OMB Memorandum M–22–11''), which provided Federal agencies with expanded implementation guidance on the particulars of BABA. There is, therefore, a strong public interest in ensuring that the requirements which those recipients expected as part of their award execution are not changed mid-stream. Implementing this Waiver would ensure that awards requiring the Preference would stem from Funding Opportunity Announcements that provided clear and detailed guidance on BABA requirements so as to afford applicants an opportunity to properly integrate those requirements into their project and budget planning. The Waiver will thus serve to send a signal to recipients and manufacturers that the Department intends to take application of the Preference seriously, while also signaling that it understands that serious application requires appropriate notice and guidance of the Department's expectations.

In addition to the necessary internal process changes that must be generated and vetted inside the Department, BABA represents a major change to how many Federal financial assistance recipients, including States, local governments, and Tribal governments must plan, scope, and execute projects that fall under the purview of BABA, requiring application of the Preference. Many recipients may not be familiar with the process of conducting appropriate market research and sourcing products that meet BABA's requirements, creating the risk of noncompliance and project stops in applicable projects, especially in cases where no BABA information was provided in the FOA to which those entities originally applied. Moreover, many DOE recipients include smaller entities—such as local governmental entities or tribal governments—which may not have resources to quickly adapt to the requirement to domestically source iron, steel, manufactured products, and/or construction materials without significant assistance from DOE. Prior Department experience working with these entities applying the Buy America requirement under ARRA may be instructive. However, it cannot be assumed that many of the entities required to apply the Preference will be able to easily locate domestic sources of applicable items or identify instances when international trade agreements consider foreign products ''domestic'' for purposes of the Preference.

The Waiver is therefore necessary to avoid disruption of projects when the applicants could not have foreseen the BABA requirements at the time when they planned their project activities. In addition, it would allow the Department an opportunity to work with and provide sufficient notice to its future applicants and recipients to ensure that the Preference can be effectively and efficiently integrated into a large swath of the Department's Federal financial assistance activities without disrupting DOE's primary mission of ensuring security and prosperity by addressing America's energy, environmental, and nuclear challenges through transformative science and technology solutions.

Accordingly, with respect to the challenges discussed previously, DOE plans on conducting the following activities during the Waiver period:

1. Consulting with DOE financial assistance programs to ensure that all programmatic needs and unique requirements are met, consistent with the requirements of BABA;

2. Designing a process to effectively vet applications submitted to Funding Opportunity Announcements to determine whether the Preference must be applied, avoiding unnecessary disruption to the project selection process and minimizing, where possible, such reviews for projects that are not likely to be selected for award;

3. Determining what documentation and/or certification processes will be needed from applicants and/or recipients to demonstrate project compliance with the Preference, as well as processes to address non-compliance with the Preference;

4. Crafting comprehensive guidance for applicants and recipients to assist with the planning and integration of the Preference, as well as waiver processes so that projects that need a waiver can easily and efficiency request one; and

5. Investigating the need for a Paperwork Reduction Act approval for the information collected as part of recipient compliance with BABA.

At the conclusion of the Waiver period, DOE expects to have specific guidance for its stakeholders on evaluating their proposed project for the presence of construction, alteration, maintenance, and/or repair of infrastructure in the United States, and properly integrating the domestic procurement of iron, steel, manufactured products, and/or construction materials into their proposed project budgets and schedules as part of their project applications. There will also be an expectation that applicants will seek waivers early and as a result of legitimate needs, as the Department will also be issuing clear waiver guidance with a strong focus on the notion that waivers be issued judiciously.

V. Assessment of Cost Advantage of a Foreign-Sourced Product

Under OMB Memorandum M–22–11, agencies must assess ''whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or

[2] *https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf.*

manufactured products,'' before granting a public interest waiver. As the impetus for this Waiver is not related to the sourcing of foreign products, DOE has determined that the above-mentioned assessment is not applicable.

VI. Limited Duration of Waiver

DOE understands and is invested in the successful implementation of BABA and the Preference in tandem with the Department's core mission. The Department will therefore work expeditiously to achieve the objectives discussed in this notice of proposed Waiver. Although the Waiver will be active for applicable awards during a period of 180 days after its implementation, the Department reserves the right to terminate the Waiver early if the objectives of the Waiver are completed before the planned conclusion of the Waiver period. If the Department opts to do so, it will provide as much advance notice as possible.

VII. Solicitation of Comments

As required under section 70914 of the IIJA, DOE is soliciting comments from the public on this proposed Waiver. In particular, DOE welcomes comments on the length, purpose, and scope of the Waiver to allow DOE to make an informed final determination on those aspects of the Waiver, at a minimum. Please refer to the **DATES** and **ADDRESSES** sections of this notice for information on submission of comments.

Confidential Business Information: Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public discourse should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Signing Authority: This document of the Department was signed on July 15, 2022, by John Bashista, Director of Acquisition Management, pursuant to delegated authority from the Secretary of Energy. That document, with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 18, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–15569 Filed 7–20–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico; Meeting

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an online virtual combined meeting of the Consent Order Subcommittee and Risk Evaluation and Management Subcommittee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act requires that public notice of this online virtual meeting be announced in the **Federal Register**.

DATES: Wednesday, August 17, 2022; 1:00 p.m.–4:00 p.m.

ADDRESSES: This meeting will be held virtually via WebEx. To attend, please contact Menice Santistevan by email, *Menice.Santistevan@em.doe.gov,* no later than 5:00 p.m. MDT on Friday, August 12, 2022.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 699–0631 or Email: *Menice.Santistevan@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Purpose of the Consent Order Subcommittee (COC): It is the mission of the COC to review the Consent Order, evaluate its strengths and weaknesses, and make recommendation as to how to improve the Consent Order. It is also within the mission of this committee to review and ensure implementation of NNMCAB Recommendation 2019–02, Improving the Utility of the Consent Order with Supplementary Information. The COC will work with the NNMCAB Risk Evaluation and Management Subcommittee to review the risk-based approaches used to determine the prioritization of cleanup actions, as well as the ''relative risk ranking'' of the campaigns, targets, and milestones by the NNMCAB, to be recommended for use by the DOE EM Los Alamos Field Office (EM–LA) both within and outside of those activities covered by the Consent Order.

Purpose of the Risk Evaluation and Management Subcommittee (REMC): The REMC provides external citizen-based oversight and recommendations to the DOE EM–LA on human and ecological health risk resulting from historical, current, and future hazardous and radioactive legacy waste operations at Los Alamos National Laboratory (LANL). The REMC will, to the extent feasible, stay informed of DOE EM–LA and LANL's environmental restoration and long-term environmental stewardship programs and plans. The REMC will also work with the NNMCAB COC to provide DOE EM–LA and LANL with the public's desires in determining cleanup priorities. The REMC will prepare recommendations that represent to the best of committee's knowledge and ability to determine, the public's position on human and ecological health risk issues pertaining to direct radiation or contaminant exposure to soils, air, surface and groundwater quality, or the agricultural and ecological environment.

Tentative Agenda:

- Approval of Agenda
- Old Business
- New Business
- Election of Chair and Vice-Chair for Fiscal Year 2023
- Performance of Landfill Covers in New Mexico
- Public Comment Period
- Update from Deputy Designated Federal Officer

Public Participation: The online virtual meeting is open to the public. To sign up for public comment, please contact Menice Santistevan by email, *Menice.Santistevan@em.doe.gov,* no later than 5:00 p.m. MDT on Friday, August 12, 2022. Written statements may be filed with the Subcommittees either before or within five days after the meeting by sending them to Menice Santistevan at the aforementioned email address. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public

comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or telephone number listed above. Minutes and other Board documents are on the internet at: *http://energy.gov/em/nnmcab/meeting-materials.*

Signed in Washington, DC, on July 18, 2022.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2022–15586 Filed 7–20–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2579–005.

Applicants: NorthPoint Energy Solutions Inc.

Description: Notice of Change in Status of NorthPoint Energy Solutions, Inc.

Filed Date: 7/14/22.

Accession Number: 20220714–5211.

Comment Date: 5 p.m. ET 8/4/22.

Docket Numbers: ER20–1836–002.

Applicants: Dominion Energy South Carolina, Inc.

Description: Compliance filing: 2nd Supp Order 864 Compliance filing to be effective 1/27/2020.

Filed Date: 7/15/22.

Accession Number: 20220715–5017.

Comment Date: 5 p.m. ET 8/5/22.

Docket Numbers: ER21–64–000.

Applicants: Macquarie Energy LLC.

Description: Refund Report of Macquarie Energy LLC.

Filed Date: 7/15/22.

Accession Number: 20220715–5114.

Comment Date: 5 p.m. ET 8/5/22.

Docket Numbers: ER22–1703–001.

Applicants: Salem Harbor Power Development LP.

Description: Notice of Change in Status of Salem Harbor Power Development LP.

Filed Date: 7/14/22.

Accession Number: 20220714–5207.

Comment Date: 5 p.m. ET 8/4/22.

Docket Numbers: ER22–2141–000; ER22–2283–000; ER22–2284–000.

Applicants: Black Bear Alabama Solar Tenant, LLC, Black Bear Alabama Solar 1, LLC, Sun Mountain Solar 1, LLC.

Description: Supplement to June 17, 2022 Sun Mountain Solar 1, LLC, et al. tariff filing.

Filed Date: 7/14/22.

Accession Number: 20220714–5206.

Comment Date: 5 p.m. ET 7/25/22.

Docket Numbers: ER22–2378–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3908R1 T.

Filed Date: 7/15/22.

Accession Number: 20220715–5008.

Comment Date: 5 p.m. ET 8/5/22.

Docket Numbers: ER22–2379–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3979 Ponderosa Wind II GIA to be effective 7/12/2022.

Filed Date: 7/15/22.

Accession Number: 20220715–5041.

Comment Date: 5 p.m. ET 8/5/22.

Docket Numbers: ER22–2381–000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: American Transmission Systems, Incorporated submits tariff filing per 35.13(a)(2)(iii): ATSI submits four ECSAs, SA Nos. 6345, 6346, 6405 and 6407 to be effective 9/14/2022.

Filed Date: 7/15/22.

Accession Number: 20220715–5068.

Comment Date: 5 p.m. ET 8/5/22.

Docket Numbers: ER22–2382–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to OA, Schedule 7, section 1.2 (b) re: EKPC UFLS requirements to be effective 9/14/2022.

Filed Date: 7/15/22.

Accession Number: 20220715–5078.

Comment Date: 5 p.m. ET 8/5/22.

Docket Numbers: ER22–2383–000.

Applicants: Black Hills Power, Inc.

Description: § 205(d) Rate Filing: Filing of Jurisdictional Point-to-Point Transmission Service Agreements to be effective 12/31/9998.

Filed Date: 7/15/22.

Accession Number: 20220715–5094.

Comment Date: 5 p.m. ET 8/5/22.

Docket Numbers: ER22–2384–000.

Applicants: Athens Energy LLC.

Description: Notice of Cancellation of Market Based Rate Tariff of Athens Energy, LLC.

Filed Date: 7/14/22.

Accession Number: 20220714–5208.

Comment Date: 5 p.m. ET 8/4/22.

Docket Numbers: ER22–2385–000.

Applicants: Panorama Wind, LLC.

Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 7/16/2022.

Filed Date: 7/15/22.

Accession Number: 20220715–5116.

Comment Date: 5 p.m. ET 8/5/22.

Docket Numbers: ER22–2386–000.

Applicants: Wisconsin Public Service Corporation.

Description: § 205(d) Rate Filing: Filing of Amended Agency Services Agreement to be effective 9/14/2022.

Filed Date: 7/15/22.

Accession Number: 20220715–5122.

Comment Date: 5 p.m. ET 8/5/22.

Docket Numbers: ER22–2387–000.

Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Mid-Atlantic Interstate Transmission, LLC submits tariff filing per 35.13(a)(2)(iii): MAIT submits Five ECSAs, SA Nos. 6351, 6401, 6403, 6404 and 6406 to be effective 9/14/2022.

Filed Date: 7/15/22.

Accession Number: 20220715–5140.

Comment Date: 5 p.m. ET 8/5/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 15, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–15597 Filed 7–20–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP22–1053–000.

Applicants: Gulfstream Natural Gas System, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate—Amended Duke En FL 9000105 to be effective 9/1/2022.
Filed Date: 7/15/22.
Accession Number: 20220715–5009.
Comment Date: 5 p.m. ET 7/27/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 15, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–15596 Filed 7–20–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15258–000]

Lock+™ Hydro Friends Fund XI, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 4, 2022, Lock+™ Hydro Friends Fund XI, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Lock and Dam No. 25 Hydropower Project to be located on the Mississippi River and near the City of Winfield, Missouri in Lincoln County, Missouri, and Calhoun County, Illinois. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) a 210-foot-long by 40-foot-wide reinforced concrete headrace; (2) a 210-foot-long by 40-foot-wide by 50-foot-high submersible reinforced concrete powerhouse containing seven 10-megawatt (MW) turbines; (3) seven submersible 10-MW generators rated at 6.9 kilovolts (kV) or 13 kV; (4) 50-foot-wide by 210-foot-long draft tubes; (5) 40-foot-wide by 210-foot-long reinforced concrete tailrace; (6) a 25-foot by 50-foot switchyard; (7) a 4.45-mile-long, 6.9-kV or 13-kV transmission line connecting to an existing transmission system; and (8) appurtenant facilities. The estimated annual generation of the Lock and Dam No. 25 Hydropower would be 307,000 megawatt-hours.

Applicant Contact: Mr. Wayne Krouse; Lock+ Hydro Friends Fund XI, LLC; 2901 4th Avenue South, #B 253, Birmingham, AL 35233; phone: (877) 556–6566 ext. 709.

FERC Contact: Michael Davis; phone: (202) 502–8339.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15258–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–15258) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 15, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–15599 Filed 7–20–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 5737–026, –027]

Santa Clara Valley Water District; Notice of Cross Valley Pipeline Extension Project and Coyote Creek Chillers Project Site-Specific Plan Accepted for Filing and New Location for Chillers and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric plan has been filed with the Commission and is available for public inspection:

a. *Filing Type:* Cross Valley Pipeline Extension Project and Coyote Creek Chillers Project Site-Specific Plan.

b. *Project Nos:* 5737–026 and 5737–027.

c. *Date Filed:* July 1, 2022 and supplemented on July 13, 2022.

d. *Applicant:* Santa Clara Valley Water District.

e. *Name of Project:* Anderson Dam Hydroelectric Project.

f. *Location:* The project is located on Coyote Creek in Santa Clara County, CA.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Christopher Hakes, (408) 630–3796, *chakes@valleywater.org.*

i. *FERC Contact:* Mark Ivy, (202) 502–6156, *mark.ivy@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* August 1, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory

Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–5737–026, –027. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Condition 3 of the Water Quality Certification, issued on November 9, 2020, by the California Water Resources Control Board (California Water Board) for the Federal Energy Regulatory Commission Order Compliance Project for Anderson Reservoir and Dam requires Valley Water to develop a Cross Valley Pipeline Extension and Coyote Creek Chillers Project Site-Specific Plan (Plan). The Plan, approved by the California Water Board, includes construction of: (1) an extension of the existing Cross Valley Pipeline that starts at the intersection of Hale Avenue and San Bruno Avenue and terminates at Coyote Creek, downstream of Ogier Ponds; and (2) chillers that will cool imported water that will be discharged from the current Cross Valley Pipeline discharge point into the Cold-Water Management Zone in Coyote Creek below Anderson Dam. Construction of the Cross Valley Pipeline extension includes dewatering several segments of pipeline, adding a new pipeline branch, and construction of an outfall structure on the bank of Coyote Creek. Since Commission staff analyzed and approved the chillers in the October 1, 2020 and February 2, 2021 Orders Approving, In Part, Reservoir Drawdown and Operations Plan, Valley Water has changed its proposed location for constructing and operating the chillers. Valley Water proposes to install and operate the chillers at the existing Coyote Pumping Plant (owned by the U.S. Bureau of Reclamation) located at 18300 Peet Road, Morgan Hill, CA.

l. *Locations of the Plan:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must: (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: July 15, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–15600 Filed 7–20–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF16–1–001]

Southwestern Power Administration; Notice of Filing

Take notice that on September 7, 2021, Southwestern Power Administration submitted tariff filing: 2015 Robert D Willis Rate Extension Informational Filing to be effective 10/1/2021.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call

toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on August 1, 2022.

Dated: July 15, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–15605 Filed 7–20–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL22–70–000]

Southwest Power Pool, Inc.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On July 14, 2022, the Commission issued an order in Docket No. EL22–70–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Southwest Power Pool, Inc.'s Open Access Transmission Tariff is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful with respect to the formula rate protocols of Omaha Public Power District (Omaha Power).[1] *Southwest Power Pool, Inc.,* 180 FERC ¶ 61,025 (2022).

The refund effective date in Docket No. EL22–70–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL22–70–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: July 15, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–15601 Filed 7–20–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL22–69–000]

Southwest Power Pool, Inc.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On July 14, 2022, the Commission issued an order in Docket No. EL22–69–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Southwest Power Pool, Inc.'s Open Access Transmission Tariff is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful with respect to the formula rate protocols of Nebraska Public Power District (Nebraska Power).[1] *Southwest Power Pool, Inc.,* 180 FERC ¶ 61,024 (2022).

The refund effective date in Docket No. EL22–69–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL22–69–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: July 15, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–15602 Filed 7–20–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–3–000]

Billing Procedures for Annual Charges for the Costs of Other Federal Agencies for Administering Part I of the Federal Power Act; Notice Reporting Costs for Other Federal Agencies' Administrative Annual Charges for Fiscal Year 2021

1. The Federal Energy Regulatory Commission (Commission) is required to determine the reasonableness of costs incurred by other Federal agencies

[1] Omaha Power's formula rate protocols are contained within Attachment H of the SPP OATT.

[1] Nebraska Power's formula rate protocols are contained within Attachment H of the SPP OATT.

(OFAs) [1] in connection with their participation in the Commission's proceedings under the Federal Power Act (FPA) Part I [2] when those agencies seek to include such costs in the administrative charges licensees must pay to reimburse the United States for the cost of administering Part I.[3] The Commission's *Order on Remand and Acting on Appeals of Annual Charge Bills* [4] determined which costs are eligible to be included in the administrative annual charges. This order also established a process whereby the Commission would annually request each OFA to submit cost data, using a form [5] specifically designed for this purpose. In addition, the order established requirements for detailed cost accounting reports and other documented analyses to explain the cost assumptions contained in the OFAs' submissions.

2. The Commission has completed its review of the forms and supporting documentation submitted by the U.S. Department of the Interior (Interior), the U.S. Department of Agriculture (Agriculture), and the U.S. Department of Commerce (Commerce) for fiscal year (FY) 2021. This notice reports the costs the Commission included in its administrative annual charges for FY 2022.

Scope of Eligible Costs

3. The basis for eligible costs that should be included in the OFAs' administrative annual charges is prescribed by the Office of Management and Budget's (OMB) Circular A–25—*User Charges* and the Federal Accounting Standards Advisory Board's Statement of Federal Financial Accounting Standards (SFFAS) Number 4—*Managerial Cost Accounting Concepts and Standards for the Federal Government.* Circular A–25 establishes Federal policy regarding fees assessed for government services and provides specific information on the scope and type of activities subject to user charges. SFFAS Number 4 provides a conceptual framework for federal agencies to determine the full costs of government goods and services.

4. Circular A–25 provides for user charges to be assessed against recipients of special benefits derived from federal activities beyond those received by the general public.[6] With regard to licensees, the special benefit derived from federal activities is the license to operate a hydropower project. The guidance provides for the assessment of sufficient user charges to recover the *full* costs of services associated with these special benefits.[7] SFFAS Number 4 defines full costs as the costs of resources consumed by a specific governmental unit that contribute directly or indirectly to a provided service.[8] Thus, pursuant to OMB requirements and authoritative accounting guidance, the Commission must base its OFA administrative annual charge on all direct and indirect costs incurred by agencies in administering Part I of the FPA. The special form the Commission designed for this purpose, the ''Other Federal Agency Cost Submission Form,'' captures the full range of costs recoverable under the FPA and the referenced accounting guidance.[9]

Commission Review of OFA Cost Submittals

5. The Commission received cost forms and other supporting documentation from the Departments of the Interior, Agriculture, and Commerce. The Commission completed a review of each OFA's cost submission forms and supporting reports. In its examination of the OFAs' cost data, the Commission considered each agency's ability to demonstrate a system or process which effectively captured, isolated, and reported FPA Part I costs as required by the ''Other Federal Agency Cost Submission Form.''

6. The Commission held a Technical Conference on March 24, 2022, to report its initial findings to licensees and OFAs. Representatives for several licensees and most of the OFAs attended the conference. Following the technical conference, a transcript was posted, and licensees had the opportunity to submit comments to the Commission regarding its initial review.

7. Idaho Falls Group (Idaho Falls) filed written comments [10] raising concerns that the submittals do not contain sufficient information to determine whether the costs are reasonable as required by the FPA. Idaho Falls also raises a specific concern regarding the National Park Service (NPS) individual cost submission. The issues are addressed in the Appendix to this notice.

8. After additional review, full consideration of the comments presented, and in accordance with the previously cited guidance, the Commission accepted as reasonable any costs reported via the cost submission forms that were clearly documented in the OFAs' accompanying reports and/or analyses. These documented costs will be included in the administrative annual charges for FY 2022.

[1] The OFAs include: the U.S. Department of the Interior (Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, National Park Service, U.S. Fish and Wildlife Service, Office of the Solicitor, Office of Environmental Policy & Compliance, Office of Hearings and Appeals, and Office of Policy Analysis); the U.S. Department of Agriculture (U.S. Forest Service); the U.S. Department of Commerce (National Marine Fisheries Service); and the U.S. Army Corps of Engineers.

[2] 16 U.S.C. 791a–823d (2018).

[3] *See id.* § 803(e)(1) and 42 U.S.C. 7178 (2018).

[4] 107 FERC ¶ 61,277, *order on reh'g,* 109 FERC ¶ 61,040 (2004).

[5] Other Federal Agency Cost Submission Form, *available at https://www.ferc.gov/docs-filing/forms.asp#ofa.*

[6] OMB Circular A–25 § 6.

[7] OMB Circular A–25 § 6.a.2.

[8] SFFAS Number 4 ¶ 7.

[9] For the past few years, the form has excluded ''Other Direct Costs'' to avoid the possibility of confusion that occurred in earlier years as to whether costs were being entered twice as ''Other Direct Costs'' and ''Overhead.''

[10] *See* Letter from Michael A. Swiger, Van Ness Feldman, to the Honorable Kimberly D. Bose, FERC, Docket No. AD22–3–000 (filed April 27, 2022).

Summary of Reported & Accepted Costs for Fiscal Year 2021

	Municipal		Non-Municipal		TOTAL	
	Reported	Accepted	Reported	Accepted	Reported	Accepted
Department of Interior						
Bureau of Indian Affairs	-	-	-	-	-	-
Bureau of Land Management	-	-	126,772	126,772	126,772	126,772
Bureau of Reclamation	756	-	24,375	-	25,131	-
National Park Service	159,989	159,989	607,804	607,804	767,793	767,793
U.S. Fish and Wildlife Service	111,291	110,498	1,205,906	1,197,285	1,317,197	1,307,782
Office of the Solicitor	-	-	-	-	-	-
Office of Environmental Policy & Compliance	51,407	51,407	177,062	177,062	228,469	228,469
Office of Hearings and Appeals	-	-	-	-	-	-
Office of Policy Analysis	-	-	-	-	-	-
Department of Agriculture						
U.S. Forest Service	565,036	609,608	836,361	791,120	1,401,397	1,400,728
Department of Commerce						
National Marine Fisheries Service	959,134	960,429	832,536	831,242	1,791,670	1,791,670
TOTAL	**1,847,613**	**1,891,931**	**3,810,816**	**3,731,285**	**5,658,429**	**5,623,214**

Figure 1

9. Figure 1 summarizes the total reported costs incurred by Interior, Agriculture, and Commerce with respect to their participation in administering Part I of the FPA. Additionally, Figure 1 summarizes the reported costs that the Commission determined were clearly documented and accepted for inclusion in its FY 2022 administrative annual charges.

Summary Findings of Commission's Costs Review

10. As presented in Figure 1, the Commission has determined that $5,623,214 of the $5,658,429 in total reported costs were reasonable and clearly documented in the OFAs' accompanying reports and/or analyses. Based on this finding, 1% of the total reported cost was determined to be unreasonable.

11. The cost reports that the Commission determined were clearly documented and supported could be traced to detailed cost-accounting reports, which reconciled to data provided from agency financial systems or other pertinent source documentation. A further breakdown of these costs is included in the Appendix to this notice, along with an explanation of how the Commission determined their reasonableness.

Points of Contact

12. If you have any questions regarding this notice, please contact Raven Rodriguez at (202) 502–6276.

Dated: July 15, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–15598 Filed 7–20–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL22–67–000]

Southwest Power Pool, Inc.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On July 14, 2022, the Commission issued an order in Docket No. EL22–67–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Southwest Power Pool, Inc.'s Open Access Transmission Tariff is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful with respect to the formula rate protocols of Grand River Dam Authority (Grand River).[1] *Southwest Power Pool, Inc.,* 180 FERC ¶ 61,022 (2022).

The refund effective date in Docket No. EL22–67–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL22–67–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: July 15, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–15604 Filed 7–20–22; 8:45 am]

BILLING CODE 6717–01–P

[1] Grand River's formula rate protocols are contained within Addendum 13 to Attachment H of the SPP OATT.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL22–68–000]

Southwest Power Pool, Inc.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On July 14, 2022, the Commission issued an order in Docket No. EL22–68–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Southwest Power Pool, Inc.'s Open Access Transmission Tariff is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful with respect to the formula rate protocols of Lincoln Electric System (Lincoln Electric).[1] *Southwest Power Pool, Inc.,* 180 FERC ¶ 61,023 (2022).

The refund effective date in Docket No. EL22–68–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL22–68–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: July 15, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–15603 Filed 7–20–22; 8:45 am]

BILLING CODE 6717–01–P

[1] Lincoln Electric's formula rate protocols are contained within Attachment H of the SPP OATT.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF14–1–004]

Southwestern Power Administration; Notice of Filing

Take notice that on September 7, 2021, Southwestern Power Administration submitted tariff filing: 2013 Integrated System Rate Extension Informational Filing—2021 to be effective 10/1/2021.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on August 1, 2022.

Dated: July 15, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–15606 Filed 7–20–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–42–000]

Northern Natural Gas Company; Notice of Availability of the Environmental Assessment for the Proposed Ogden to Ventura A-Line Abandonment and Capacity Replacement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Ogden to Ventura A-line Abandonment and Capacity Replacement Project (Project), proposed by Northern Natural Gas Company (Northern) in the above-referenced docket. Northern requests authorization to abandon, construct, modify, and operate natural gas pipeline facilities in Boone, Webster, and Hancock Counties, Iowa.

The EA assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed Project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed Project includes the following activities and facilities:

• abandon-in-place 82.7 miles of 20-inch-diameter IAM60601 A-line pipeline (A-line) between the Ogden and Ventura compressor stations in Boone, Webster, and Hancock Counties, Iowa;
• disconnect the 20-inch-diameter A-line near the Ogden Compressor Station in Boone County, Iowa;
• disconnect the 20-inch-diameter A-line at the Eagle Grove branch line take-off in Wright County, Iowa;
• disconnect the 20-inch-diameter A-line at the Ventura Compressor Station in Hancock County, Iowa;
• install 300 to 1,200 horsepower (hp) temporary compression stations at three discrete locations (one each in Boone, Webster, and Hancock Counties) to evacuate gas from the A-line to the IAM60602 B-line (B-line); and
• install a pipeline extension of the IAM60604 D-Line pipeline (D-line) consisting of 6.04 miles of 30-inch-diameter pipeline and an associated aboveground pipeline inspection gauge (pig) receiver in Wright County, Iowa.

The Commission mailed a copy of the *Notice of Availability* of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the Project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP22–42). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this Project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on August 15, 2022.

For your convenience, there are three methods you can use to file your comments with the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the Project docket number (CP22–42–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/ferc-online/ferc-online/how-guides.*

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: July 15, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–15595 Filed 7–20–22; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0568; FR ID 96866]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents,

including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC 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 PRA comments should be submitted on or before September 19, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0568.

Title: Sections 76.970, 76.971, and 76.975, Commercial Leased Access Rates, Terms and Conditions, and Dispute Resolution.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 2,677 respondents; 6,879 responses.

Estimated Time per Response: 0.5 hours to 40 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Third-party disclosure requirement.

Obligation to Respond: Mandatory; Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 4(i), 303, and 612 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 532.

Total Annual Burden: 17,131 hours.

Total Annual Cost: $118,000.

Needs and Uses: The information collection requirements for this collection are contained in the following rule sections:

47 CFR 76.970(h) requires cable operators to provide prospective leased access programmers with the following information within 30 calendar days of the date on which a bona fide request for leased access information is made, provided that the programmer has remitted any application fee that the cable system operator requires up to a maximum of $100 per system-specific bona fide request (for systems subject to small system relief, cable operators are required to provide the following information within 45 calendar days of a bona fide request):

(a) How much of the cable operator's leased access set-aside capacity is available;

(b) a complete schedule of the operator's full-time leased access rates;

(c) rates associated with technical and studio costs; and

(d) if specifically requested, a sample leased access contract.

Bona fide requests, as used in this section, are defined as requests from potential leased access programmers that have provided the following information:

(a) The desired length of a contract term;

(b) the anticipated commencement date for carriage; and

(c) the nature of the programming.

All requests for leased access must be made in writing and must specify the date on which the request was sent to the operator. Operators must maintain supporting documentation to justify scheduled rates, including supporting contracts, calculations of the implicit fees, and justifications for all adjustments.

Cable system operators must disclose on their own websites, or through alternate means if they do not have their own websites, a contact name or title, telephone number, and email address for the person responsible for responding to requests for information about leased access channels.

47 CFR 76.971 requires cable operators to provide billing and collection services to leased access programmers unless they can demonstrate the existence of third party billing and collection services which, in terms of cost and accessibility, offer leased access programmers an alternative substantially equivalent to that offered to comparable non-leased access programmers.

47 CFR 76.975(b) allows any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available or to charge rates for such capacity in accordance with the relevant provisions of the statute or the implementing regulations to file a petition for relief with the Commission. Persons alleging that a cable operator's leased access rate is unreasonable must receive a determination of the cable operator's maximum permitted rate from an independent accountant prior to filing a petition. If parties cannot agree on a mutually acceptable accountant within five business days of the programmer's request for a review, they must each select an independent accountant on the sixth business day. These two accountants will then have five business days to select a third independent accountant to perform the review. To account for their more limited resources, operators of systems entitled to small system relief have 14 business days to select an independent accountant when no agreement can be reached.

47 CFR 76.975(c) requires that petitioners attach a copy of the final accountant's report to their petition where the petition is based on allegations that a cable operator's leased access rates are unreasonable.

47 CFR 76.975(e) provides that the cable operator or other respondent will have 30 days from service of the petition to file an answer. If a leased access rate is disputed, the answer must show that the rate charged is not higher than the maximum permitted rate for such leased access, and must be supported by the affidavit of a responsible company official. If, after an answer is submitted, the staff finds a prima facie violation of our rules, the staff may require a respondent to produce additional information, or specify other procedures necessary for resolution of the proceeding. Replies to answers must be filed within fifteen (15) days after submission of the answer.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–15584 Filed 7–20–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0853, 3060–0989; FR ID 96689]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or

the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before September 19, 2022. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0853.

Title: Certification by Administrative Authority to Billed Entity Compliance with the Children's Internet Protection Act Form, FCC Form 479; Receipt of Service Confirmation and Certification of Compliance with the Children's Internet Protection Act Form, FCC Form 486; and Funding Commitment and Adjustment Request Form, FCC Form 500.

Form Numbers: FCC Forms 479, 486 and 500.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents and Responses: 58,500 respondents; 73,400 responses.

Estimated Time per Response: 1 hour for FCC Form 479, 1 hour for FCC Form 486, 1 hour for FCC Form 500, and 0.75 hours for maintaining and updating the internet Safety Policy.

Frequency of Response: On occasion and annual reporting requirements and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302.

Total Annual Burden: 68,275 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no assurance of confidentiality provided to respondents concerning this information collection. However, respondents may request materials or information submitted to the Commission or the Administrator be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: The Commission is requesting the Office of Management and Budget (OMB) approval to revise the currently approved requirements contained in this information collection. There is an increase in burden hours of 14,900 hours. The purpose of this information is to ensure that schools and libraries that are eligible to receive discounted Internet Access services (Category One), and Broadband Internal Connections, Managed Internal Broadband Services, and Basic Maintenance of Broadband Internal Connections (Basic Maintenance) (known together as Category Two Services) have in place internet safety policies. Schools and libraries receiving these services must certify, by completing a FCC Form 486 (Receipt of Service Confirmation and Certification of Compliance with the Children's Internet Protection Act), that respondents are enforcing a policy of internet safety and enforcing the operation of a technology prevention measure. Also, respondents who received a Funding Commitment Decision Letter indicating services eligible for universal service funding must file FCC Form 486 to indicate their service start date and to start the payment process. In addition, all members of a consortium must submit signed certifications to the Billed Entity of their consortium using a FCC Form 479; Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act, in language consistent with the certifications adopted for the FCC Form 486. Consortia must, in turn, certify collection of the FCC Forms 479 on the FCC Form 486. FCC Form 500 is used by E-rate participants to adjust previously filed forms, such as changing the contract expiration date filed with the FCC Form 471, changing the funding year service start date filed with the FCC Form 486, cancelling or reducing the amount of funding commitments, requesting extensions of the deadline for nonrecurring services, and notifying USAC of equipment transfers. All requirements contained herein are necessary to implement the congressional mandate for universal service.

OMB Control Number: 3060–0989.

Title: Sections 63.01, 63.03, 63.04, Procedures for Applicants Requiring Section 214 Authorization for Domestic Interstate Transmission Lines Acquired Through Corporate Control.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 92 respondents; 92 responses.

Estimated Time per Response: 1.5–14 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Mandatory. Statutory authority for this collection is contained in 47 U.S.C. 152, 154(i)–(j), 201, 214, and 303(r).

Total Annual Burden: 1,201 hours.

Total Annual Cost: $107,925.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality. The FCC is not requiring applicants to submit confidential information to the Commission. If applicants want to request confidential treatment of the documents they submit to Commission, they may do so under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: A Report and Order, FCC 02–78, adopted and released in March 2002 (Order), set forth the procedures for common carriers requiring authorization under section 214 of the Communications Act of 1934, as amended, to acquire domestic interstate transmission lines through a transfer of control. Under section 214 of the Act, carriers must obtain FCC approval before constructing, acquiring, or operating an interstate transmission line. Acquisitions involving interstate common carriers require affirmative action by the Commission before the acquisition can occur. This information collection contains filing procedures for

domestic transfer of control applications under sections 63.03 and 63.04. The FCC filing fee amount for section 214 applications is currently $1,230 per application, which reflects an increase from the previous fee of $1,195 per application.

(a) Sections 63.03 and 63.04 require domestic section 214 applications involving domestic transfers of control, at a minimum, should specify: (1) the name, address and telephone number of each applicant; (2) the government, state, or territory under the laws of which each corporate or partnership applicant is organized; (3) the name, title, post office address, and telephone number of the officer or contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed; (4) the name, address, citizenship, and principal business of any person or entity that directly or indirectly owns at least ten percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one percent); (5) certification pursuant to 47 CFR 1.2001 that no party to the application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988; (6) a description of the transaction; (7) a description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area; (8) a statement as to how the application fits into one or more of the presumptive streamlined categories in section 63.03 or why it is otherwise appropriate for streamlined treatment; (9) identification of all other Commission applications related to the same transaction; (10) a statement of whether the applicants are requesting special consideration because either party to the transaction is facing imminent business failure; (11) identification of any separately filed waiver request being sought in conjunction with the transaction; and (12) a statement showing how grant of the application will serve the public interest, convenience, and necessity, including any additional information that may be necessary to show the effect of the proposed transaction on competition in domestic markets.

In FCC 20–133, adopted September 30, 2020, and released October 1, 2020, the Commission, in order to reduce the need for supplemental requests and to ensure expeditious processing of applications, added the requirements in § 63.04(a)(4) for carrier applicants seeking domestic section 214 authorization to transfer control to specify the voting interests of any person or entity owning 10 percent of the applicants, as well as provide an ownership diagram that illustrates an applicant's vertical ownership structure: (i) The name, address, citizenship, and principal business of any person or entity that directly or indirectly owns ten percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, and the percentage of equity and/or voting interest owned by each of those entities (to the nearest one percent). Where no individual or entity directly or indirectly owns ten percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, a statement to that effect; and (ii) An ownership diagram that illustrates the applicant's vertical ownership structure, including the direct and indirect ownership (equity and voting) interests held by the individuals and entities named in response to paragraph (a)(4)(i) of this section. Every individual or entity with ownership shall be depicted and all controlling interests must be identified. The ownership diagram shall include both the pre-transaction and post-transaction ownership of the authorization holder.

Where an applicant wishes to file a joint international section 214 transfer of control application and domestic section 214 transfer of control application, the applicant must submit information that satisfies the requirements of 47 CFR 63.18. In the attachment to the international application, the applicant must submit information described in 47 CFR 63.04(a)(6).

When the Commission, acting through the Wireline Competition Bureau, determines that applicants have submitted a complete application qualifying for streamlined treatment, it shall issue a public notice commencing a 30-day review period to consider whether the transaction serves the public interest, convenience and necessity. Parties will have 14 days to file any comments on the proposed transaction, and applicants will be given 7 days to respond. (b) Applicants are not required to file post-consummation notices of pro forma transactions, except that a post transaction notice must be filed with the Commission within 30 days of a pro forma transfer to a bankruptcy trustee or a debtor-in-possession. The notification can be in the form of a letter (in duplicate to the Secretary, Federal Communications Commission). The letter or other form of notification must also contain the information listed in sections (a)(1). A single letter may be filed for more than one such transfer of control. The information will be used by the Commission to ensure that applicants comply with the requirements of 47 U.S.C. 214.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–15626 Filed 7–20–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, July 26, 2022 at 10:00 a.m. and its continuation at the conclusion of the open meeting on July 28, 2022.

PLACE: 1050 First Street NE, Washington, DC and Virtual (this meeting will be a hybrid meeting).

STATUS: This meeting will be closed to the Public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Investigatory records compiled for law enforcement purposes and production would disclose investigative techniques.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer; Telephone: (202) 694–1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2022–15748 Filed 7–19–22; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') requests that the Office of Management and Budget (''OMB'') extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for the information collection requirements in the regulations governing ''Duties of Furnishers of Information to Consumer Reporting Agencies'' (''Information Furnishers

Rule''), which applies to certain motor vehicle dealers, and its shared enforcement with the Consumer Financial Protection Bureau (''CFPB'') of the furnisher provisions (subpart E) of the CFPB's Regulation V regarding other entities. That clearance expires on July 31, 2022.

DATES: Comments must be submitted by August 22, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Gorana Neskovic, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326–2322, 600 Pennsylvania Ave. NW, CC–8232, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Title: Duties of Furnishers of Information to Consumer Reporting Agencies.

OMB Control Number: 3084–0144.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 15,405 hours.[1]

Estimated Annual Labor Costs: $858,754.[2]

Estimated Annual Non-Labor Costs: $0.

Abstract

The Dodd-Frank Act[3] transferred most of the FTC's rulemaking authority for the furnisher provisions of the Fair Credit Reporting Act (''FCRA'')[4] to the CFPB. The FTC, however, retains rulemaking authority for motor vehicle dealers that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.[5] In addition, the FTC retains its authority to enforce the furnisher provisions of the FCRA and rules issued under those provisions. Accordingly, the FTC and CFPB have overlapping enforcement authority for many entities subject to CFPB's Regulation V (subpart E) and the FTC has sole enforcement authority for the motor vehicle dealers subject to the FTC rule.

Under section 660.3 of the FTC's Information Furnishers Rule[6] and section 1022.42 of the CFPB Rule,[7] furnishers must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that they furnish to a consumer reporting agency (''CRA'') for inclusion in a consumer report.[8] Section 660.4 of the FTC Rule and section 1022.43 of the CFPB Rule require that entities which furnish information about consumers to a CRA respond to direct disputes from consumers. These provisions also require that a furnisher notify consumers by mail or other means (if authorized by the consumer) within five business days after making a determination that a dispute is frivolous or irrelevant (''F/I dispute'').

Request for Comment

On January 28, 2022, the Commission sought comment on the information collection requirements associated with the Information Furnishers Rule. 87 FR 4598 (Jan. 28, 2022). No relevant comments addressing the Rule's information collections were received. Pursuant to the OMB regulations, 5 CFR part 1320, the FTC is providing this second opportunity for public comment while seeking OMB approval to renew clearance for the Rule's information collection requirements.

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential'' as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2022–15588 Filed 7–20–22; 8:45 am]

BILLING CODE 6750–01–P

[1] In the Commission's January 28, 2022, notice seeking comment on the information collection requirements associated with the Information Furnishers Rule, 87 FR 4598 (Jan. 28, 2022), the ''Estimated Annual Burden Hours'' was erroneously listed as 17,483 hours. But the underlying calculations in the January 28, 2022 notice were correct, and the sum of those burden hours is 15,405 (12,770 hours + 2,635 hours).

[2] In the Commission's January 28, 2022 notice, the ''Estimated Annual Labor Costs'' was erroneously listed as $966,143 when it was actually $840,341 ($773,096 + $67,245). Additionally, the hourly wage rates for sales and related workers were updated by the U.S. Department of Labor on March 31, 2022, and our estimates are now based on mean hourly wages found at *https://www.bls.gov/news.release/ocwage.htm* (''Occupational Employment and Wages—May 2021,'' U.S. Department of Labor, released March 2022, Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2021''). Thus, $858,754 is the current estimate for annual labor costs.

[3] Public Law 111–203, 124 Stat. 1376 (2010).

[4] 15 U.S.C. 1681 *et seq.*

[5] *See* Dodd-Frank Act, 1029(a), (c).

[6] 16 CFR part 660.

[7] 12 CFR part 1022.

[8] The rule also provides that an entity is not a furnisher when it: provides information to a CRA solely to obtain a consumer report for a permissible purpose under the FCRA; is acting as a CRA as defined in section 603(f) of the FCRA; is an individual consumer to whom the furnished information pertains; or is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer's character, general reputation, personal characteristics, or mode of living in response to a specific request from a CRA.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the revised information collection project ''The AHRQ Safety Program for Methicillin-Resistant *Staphylococcus aureus* (MRSA) Prevention.''

DATES: Comments on this notice must be received by September 19, 2022.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden

can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

AHRQ Safety Program for Methicillin-Resistant Staphylococcus aureus (MRSA) Prevention

The Agency for Healthcare Research and Quality (AHRQ) requests to revise the currently approved AHRQ Safety Program for Methicillin-Resistant Staphylococcus aureus (MRSA) Prevention. The AHRQ Safety Program for MRSA Prevention's purpose is to reduce the incidence and prevalence of infections caused by MRSA in a variety of settings.

The AHRQ Safety Program for MRSA Prevention was last approved by OMB on August 31, 2021 and will expire on August 31, 2024. The OMB control number for the AHRQ Safety Program for MRSA Prevention is 0935–0260. All of the supporting documents for the current AHRQ Safety Program for MRSA Prevention can be downloaded from OMB's website at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202107-0935-003.*

The revision for the AHRQ Safety Program for MRSA Prevention includes the following modifications:

1. *ICU/Non-ICU cohort:* The optional point prevalence data will be collected at baseline (pre-intervention) and every six months throughout the 18-month implementation period rather than only at baseline. Thus, it will be collected a total of four times. The clinical outcomes measures for the ICU/Non-ICU cohort have been updated from the version included in the original OMB review.

In addition to the change in the frequency of collection of point prevalence data, the program will accept hospital data collected using the new Version 2.0 of the AHRQ Hospital Survey on Patient Safety Culture (HSOPS) as an alternative to the original HSOPS Version 1.0. HSOPS Version 2.0 is a shorter instrument with a total of 40 survey items compared with 51 survey items in the HSOPS Version 1.0.

2. *Surgical Services cohort:* After a discussion with the program's Technical Expert Panel (TEP), it was decided to collect surgical site infection (SSI) outcome data on a different subset of surgical procedures performed within the cardiac surgery, orthopedic surgery, and neurosurgery specialty areas. The clinical outcomes measures for the Surgical Services cohort have been updated from the version included in the original OMB review to reflect the changes in surgical types.

For all three surgical specialties, hospitals will have the opportunity to confer rights to the program to their SSI data submitted via National Healthcare Safety Network (NHSN). Hospitals confer rights to their NHSN data by giving the program permission to access their data directly from NHSN. In addition, hospitals with cardiac surgery teams enrolled in the program will be asked to provide data elements that are regularly collected and submitted to the Society of Thoracic Surgeons (STS). STS data elements for cardiac surgeries will include procedures that involve sternotomy and hospital readmission due to Endocarditis, infection (conduit harvest site), infection (deep sternum/mediastinitis), Pneumonia, Sepsis, or wound (drainage, cellulitis).

We estimate that 50% of 300 enrolled units (n=150) will be orthopedic and neurosurgical specialties that will confer NHSN data rights to the program. These hospitals will not need to submit any data directly to the program.

The remaining 50% of 300 enrolled units (n=150) are estimated to be either cardiac surgical specialties that need to submit STS data or orthopedic or neurosurgical specialties that do not confer NHSN data rights to the program. These hospitals are assumed to have some burden for either pulling and submitting STS data extracts for cardiac surgical specialties or pulling and submitting NHSN data elements for orthopedic or neurosurgical specialties that do not confer rights to NHSN. We assume 1 hour for the initial data pull and 30 minutes for each subsequent quarterly data pull.

In addition to the changes in clinical outcomes described above, the program will use the new HSOPS Version 2.0 instead of the original HSOPS Version 1.0 to assess patient safety culture within enrolled surgical services teams.

3. *Long-Term Care (LTC) cohort:* The LTC cohort will now also submit the Minimum Data Set (MDS) 3.0 M Skin Conditions data elements. These elements are currently collected by CMS-certified LTC facilities to remain compliant. Since the MDS 3.0 data is already being collected for CMS, LTC facilities would be asked to submit the same data to the program after transmittal to CMS. As a result, there is a minimal change in burden (*i.e.,* from five hours to six hours for the initial data pull and from 30 minutes to 45 minutes for additional pulls). The clinical outcomes measures for the LTC cohort have been updated from the version included in the original OMB review.

The project is being conducted by AHRQ through its contractor, Johns Hopkins University (JHU) and JHU's subcontractor, NORC at the University of Chicago. The project is being undertaken pursuant to AHRQ's mission to enhance the quality, appropriateness, and effectiveness of health services, and access to such services, through the establishment of a broad base of scientific research and through the promotion of improvements in clinical and health systems practices, including the prevention of diseases and other health conditions (42 U.S.C. 299).

Method of Collection

The data collection will include both primary and secondary data sources. The primary data collection includes the following:

(1) *Unit-level clinical outcome change data:* The program will use a secure online portal to collect clinical outcomes measures extracted from site electronic health record (EHR) systems for the 12-month period prior to the start of the implementation, as well as for the 18-month implementation period. These data will be used to evaluate the effectiveness of the AHRQ Safety Program for MRSA Prevention. The clinical outcomes measures for the ICU/non-ICU and Surgical Services and Long-Term Care cohorts have been updated from the version included in the original OMB review.

For the ICU and non-ICU cohorts, the clinical outcomes data will be collected quarterly and will include:

- Hospital onset MRSA invasive infection (MRSA bacteremia LabID Day 3 or after of admission)
- Community onset MRSA invasive infection (MRSA bacteremia LabID prior to Day 3 after admission)
- Patient days
- Central Line-Associated Blood Stream Infections with causative organism(s)
- Central Line Days
- Hospital onset bacteremia (Day 3 or after of admission) with causative organisms, including MSSA
- MRSA-positive clinical cultures

In addition, hospitals that are already conducting MRSA point prevalence surveys in participating ICU and non-ICU units will be asked to submit this optional data via the secure online portal. Hospitals will be asked to submit baseline data at the start of the program and then submit data once every six months for the duration of the 18-month implementation period. Thus, it will be collected a total of four times.

For the surgical services cohort, the clinical outcomes data will be collected quarterly and will include:

- Surgical site infection (SSI) events and causative organisms
- Number of surgical procedures performed, by type of surgical procedure
- Hospital readmissions

For the LTC cohort, the clinical outcomes data will be collected monthly via the secure online portal, or via fax submission, and will include:

- Transfer of facility resident(s) to an acute care hospital, with reason of suspected or confirmed infection
- Transfer of facility resident(s) to an acute care hospital, with reason other than infection
- All-cause bacteremia with causative organisms
- Resident days
- MDS 3.0 Section M Skin Conditions data elements

(2) *Survey of Patient Safety:* The program will administer AHRQ Surveys of Patient Safety Culture to all eligible AHRQ Safety Program for MRSA Prevention staff at the participating units or facilities at the beginning (month 1) and end (month 18) of the implementation. We will administer the Hospital Survey of Patient Safety Culture (HSOPS) in the ICU, non-ICU, and surgical cohorts, and the Nursing Home Survey on Patient Safety (NHSOPS) in the LTC cohort. We will accept either HSOPS Version 1.0 or Version 2.0 for the ICU and non-ICU cohort and will accept HSOPS Version 2.0 for the surgical services cohort. These surveys ask questions about patient safety issues, medical errors, and event reporting in the respective setting. The program will request that all staff on the unit or facility that is implementing the AHRQ Safety Program for MRSA Prevention complete the survey. As unit and facility size vary, we estimate the average number of respondents to be 25 for each unit.

(3) *Infrastructure Assessment Tool—Gap Analysis:* The program will administer the Gap Analysis at month 1 and month 18 of the implementation to an Infection Preventionist and one of the unit's team leaders (most likely a nurse). Information on current practices in MRSA prevention on the unit will be collected. The Gap Analysis for the surgical services cohort has been updated from the version included in the original OMB review.

(4) *Implementation Assessments—Team Checkup Tool:* The implementation assessments will be conducted to monitor the program's progress and determine what the participating sites have learned through participating in the program. The Team Checkup Tool will be requested monthly, and we anticipate participation from approximately 1 frontline staff (most commonly a nurse) per unit. The program will use the Team Checkup Tool to monitor key actions of staff. The Tool asks about use of safety guidelines, tools, and resources throughout three different phases: Assessment; Planning, Training, and Implementation; and Sustainment. The Team Checkup Tools for the LTC and Surgical Services cohorts have been updated from the versions included in the original OMB review.

The secondary data collection strategy includes use of NHSN data from hospitals that confer rights to the AHRQ Safety Program for MRSA Prevention to use their NHSN data for the evaluation. NHSN data will serve as secondary data sources for clinical outcomes in ICU, non-ICU, and surgical services units. Clinical outcome measures in LTC settings are not available in NHSN.

For hospitals that confer NHSN rights to the program for the ICU and non-ICU cohorts, the secondary data will include the five out of seven clinical outcome measures that are available via NHSN:

- Hospital onset MRSA invasive infection (MRSA bacteremia LabID Day 3 or after of admission)
- Community onset MRSA invasive infection (MRSA bacteremia LabID prior to Day 3 after admission)
- Patient days
- Central Line-Associated Blood Stream Infections with causative organism(s)
- Central Line Days

For hospitals that confer NHSN rights to the program for the surgical services cohort, the secondary data will include the two clinical outcome measures that are available via NHSN:

- Surgical site infection (SSI) events and causative organisms
- Number of surgical procedures performed, by type of surgical procedure

Estimated Annual Respondent Burden

Exhibit 1 shows the total estimated annualized burden hours for the data collection efforts.

All data collection activities are expected to occur within the three-year clearance period. The total estimated annualized burden is 12,052 hours.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents +	Number of responses per respondent	Hours per response	Total burden hours
Survey of Patient Safety Culture				
HSOPS Version 1.0 (*25 respondents per unit, pre- and post-implementation for ICU and non-ICU*)	6,667	2	0.25	3,334
HSOPS Version 2.0 (*25 respondents per unit, pre- and post-implementation for ICU and non-ICU*)	2,500	2	0.21	1,050
NHSOPS (*25 respondents per facility, one response per pre- and post-implementation for LTC cohort, 300 facilities total*)	2,500	2	0.25	1,250
Infrastructure Assessment				
Gap Analysis (*1 assessment per unit or facility, pre and post-implementation for all four cohorts, 1,400 sites total*)	467	2	1	934
Implementation Assessments				
Team Checkup Tool (*1 checklist conducted monthly during the 18 months of implementation for ICU, non-ICU, and Surgical cohorts, 1,100 units total*)	367	18	0.17	1,123

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents +	Number of responses per respondent	Hours per response	Total burden hours
Team Checkup Tool (*1 checklist conducted monthly per facility during the 18 month implementation period for LTC cohort, 300 facilities total*)	100	18	0.17	306
Electronic Health Record (EHR) Extracts				
Initial data pull for 10% of hospitals that do not confer rights to their NHSN data—(*once at baseline for ICU and non-ICU cohorts, 800 units total*)	27	1	5	135
Initial data pull for hospital onset bacteremia (including MSSA) and MRSA-positive clinical cultures (not available in NHSN) (*once at baseline for ICU and non-ICU cohorts, 800 units total*)	267	1	3.5	935
Initial data pull for 10% of units that submit point prevalence survey data (*once at baseline for ICU and non-ICU cohorts, 800 units total*)	27	1	0.5	14
Subsequent data pull for 10% of units that submit point prevalence data (*every six months during 18 months of implementation for ICU and non-ICU cohorts, 800 units total*)	27	3	0.25	20
Initial data pull for 50% of surgical units that do not confer rights to NHSN data—(*once at baseline for Surgical cohort, 300 settings total*)	50	1	1	50
Initial data pull—(*once at baseline for LTC cohort, 300 facilities total*)	100	1	6	600
Quarterly data collection of monthly data—(*quarterly during 18 months of implementation for ICU and non-ICU, cohorts, 800 units total*)	267	6	0.5	801
Quarterly data collection of monthly data for 50% of hospitals that do not confer rights to their NHSN data (*quarterly during 18 months of implementation for surgical cohorts, 300 units total*)	50	6	0.5	150
Monthly data—(*monthly per facility during 18 months of implementation for LTC cohort, 300 facilities total*)	100	18	0.75	1,350
Total	13,516			12,052

+ The number of respondents per data collection effort is calculated by multiplying the number of respondents per unit by the total number of units. The result is divided by three to capture an annualized number.

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to complete the data collection activities. The total annualized cost burden is estimated to be $554,699,76.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate	Total cost burden
Survey of Patient Safety Culture				
HSOPS Version 1.0 (*25 respondents per unit, pre- and post-implementation for ICU and non-ICU cohorts*)	6,667	3,334	* $51.53	$171,801.02
HSOPS Version 2.0 (*25 respondents per unit, pre- and post- implementation surgical cohort*)	2,500	1,050	* 51.53	54,106.50
NHSOPS (*25 respondents per facility, one response per pre- and post-implementation for LTC cohort, 300 facilities total*)	2,500	1,250	* 51.53	64,412.50
Infrastructure Assessment				
Gap Analysis (*1 assessment per unit or facility, pre and post-implementation for all four cohorts, 1,400 sites total*)	467	934	* 51.53	48,129.02
Implementation Assessments				
Team Checkup Tool (*1 checklist conducted monthly during 3 months of ramp-up and 15 months of implementation periods for ICU, non-ICU, and Surgical cohorts, 1,100 units total*)	367	1,123	* 51.53	57,868.19
Team Checkup Tool (*1 checklist conducted monthly per facility during 18 months of implementation for LTC cohort, 300 facilities total*)	100	306	* 51.53	15,768.18
Electronic Health Record (EHR) Extracts				
Initial data pull for 10% of hospitals that do not confer rights to their NHSN data—(*once at baseline for ICU and non-ICU cohorts, 800 units total*)	27	135	^ 35.17	4,747.95
Initial data pull for hospital onset bacteremia (including MSSA) and MRSA-positive clinical cultures (not available in NHSN) (*once at baseline for ICU and non-ICU cohorts, 800 units total*)	267	935	^ 35.17	32,883.95

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN—Continued

Form name	Number of respondents	Total burden hours	Average hourly wage rate	Total cost burden
Initial data pull for 10% of units that submit point prevalence survey data (*once at baseline for ICU and non-ICU cohorts, 800 units total*)	27	14	^35.17	492.38
Subsequent data pull for 10% of units that submit point prevalence data (*every six months during 18 months of implementation for ICU and non-ICU cohorts, 800 units total*)	27	20	^35.17	703.40
Initial data pull for 50% of surgical settings that do not confer rights to NHSN data—(*once at baseline for Surgical cohort, 300 settings total*)	50	50	^35.17	1,758.50
Initial data pull—(*once at baseline for LTC cohort, 300 facilities total*)	100	600	^35.17	21,102.00
Quarterly data—(*quarterly during 18 months of implementation for ICU and non-ICU cohorts, 1,100 units total*)	267	801	^35.17	28,171.17
Quarterly data collection of monthly data for 50% of hospitals that do not confer rights to their NHSN data (*quarterly during 18 months of implementation for surgical cohorts, 300 units total*)	50	150	^35.17	5,275.50
Monthly data—(*monthly per facility during 18 months of implementation for LTC cohort, 100 facilities total*)	100	1,350	^35.17	47,479.50
Total	13,516	12,052		554,699,76

*This is an average of the average hourly wage rate for physician, nurse, nurse practitioner, physician's assistant, and nurse's aide from the May 2019 National Occupational Employment and Wage Estimates, United States, U.S. Bureau of Labor Statistics (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

^This is an average of the average hourly wage rate for nurse and IT specialist from the May 2019 National Occupational Employment and Wage Estimates, United States, U.S. Bureau of Labor Statistics (*https://www.bls.gov/oescurrent/oes_nat.htm#00-0000*).

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: July 18, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–15627 Filed 7–20–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3429–PN]

Medicare and Medicaid Programs: Application From the Center for Improvement in Healthcare Quality for Continued Approval of Its Hospital Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice acknowledges the receipt of an application from the Center for Improvement in Healthcare Quality (CIHQ) for continued recognition as a national accrediting organization for hospitals that wish to participate in the Medicare or Medicaid programs.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, by August 22, 2022.

ADDRESSES: In commenting, please refer to file code CMS–3429–PN.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3429–PN, P.O. Box 8016, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3429–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Erin Imhoff (410) 786–2337; Caecilia Blondiaux (410) 786–2190.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the

individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a hospital provided certain requirements are met. Sections 1861(e) of the Social Security Act (the Act), establish distinct criteria for facilities seeking designation as a hospital. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 482 specify the minimum conditions that a hospital must meet to participate in the Medicare program.

Generally, to enter into an agreement, a hospital must first be certified by a state survey agency (SA) as complying with the conditions or requirements set forth in part 482 of our regulations. Thereafter, the hospital is subject to regular surveys by a SA to determine whether it continues to meet these requirements. There is an alternative; however, to surveys by SAs.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by a Centers for Medicare & Medicaid Services (CMS) approved national accrediting organization (AO) that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an AO is voluntary and is not required for Medicare participation.

If an AO is recognized by the Secretary of the Department of Health and Human Services (the Secretary) as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national AO applying for approval of its accreditation program under part 488, subpart A, must provide CMS with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of AOs are set forth at §§ 488.4 and 488.5. The regulations at § 488.5(e)(2)(i) require AOs to reapply for continued approval of its accreditation program every 6 years or sooner as determined by CMS.

The Center for Improvement in Healthcare Quality's (CIHQ) current term of approval for their hospital accreditation program expires July 26, 2023.

II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.5 require that our findings concerning review and approval of a national AO's requirements consider, among other factors, the applying AO's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application. We note that CIHQ submitted its application for renewal earlier than expected and therefore CMS will render a final decision prior to their current term of approval program expiration date.

The purpose of this proposed notice is to inform the public of CIHQ's request for continued approval of its hospital accreditation program. This notice also solicits public comment on whether CIHQ's requirements meet or exceed the Medicare conditions of participation (CoPs) for hospitals.

III. Evaluation of Deeming Authority Request

CIHQ submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its hospital accreditation program. This application was determined to be complete on June 3, 2022. Under section 1865(a)(2) of the Act and our regulations at § 488.5 (Application and re-application procedures for national accrediting organizations), our review and evaluation of CIHQ will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of CIHQ's standards for hospitals as compared with CMS' hospital CoPs.
- CIHQ's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of CIHQ's processes to those of state agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ CIHQ's processes and procedures for monitoring a hospital found out of compliance with CIHQ's program requirements. These monitoring procedures are used only when CIHQ identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the SA monitors corrections as specified at § 488.9.

++ CIHQ's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ CIHQ's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of CIHQ's staff and other resources, and its financial viability.

++ CIHQ's capacity to adequately fund required surveys.

++ CIHQ's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ CIHQ's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

++ CIHQ's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

V. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not

able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Vanessa Garcia, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Vanessa Garcia,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2022–15611 Filed 7–20–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Building Evidence on Employment Strategies (BEES) (OMB #0970–0537)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF), of the U.S. Department of Health and Human Services (HHS), is proposing to extend data collection activity for BEES. We are not proposing any changes to the currently approved materials.

DATES: *Comments are due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act (PRA) of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *opreinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The purpose of BEES is to evaluate the effectiveness of a range of programs designed to improve employment and earnings outcomes for individuals with low incomes. More specifically, BEES is primarily evaluating programs that serve adults whose employment prospects have been affected by Substance Use Disorder (SUD) and mental health conditions. This is being accomplished through impact and implementation studies. When possible, a randomized control trial research design is being used for the impact evaluations. This request for an extension is to complete the following data collection activities: baseline, updated contact information, and follow up surveys for the impact studies; an online staff survey; and qualitative interviews with program participants and staff. In addition to collecting these data, the BEES project will continue to maintain consent forms for the collection of administrative data. Data collected is being used to estimate the effects of the participating programs on employment, earnings, and other key outcomes for the purpose of assessing the effectiveness of the programs.

Respondents: The respondents in this extension will include individuals who will enroll in BEES and complete the baseline survey during this period. All study participants will be fielded the follow up survey. We will also conduct qualitative interviews with program staff and participants in the participating sites 1–2 times. Lastly, program staff will be asked to complete a web-based survey.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Burden for previously approved, ongoing data collection					
Attachment D1–D5. Baseline information form for participants	3,000	1	0.25	750	250
Attachment E. Contact Update Letter and Form	4,300	1	0.1	429	143
Attachment F. Program managers, staff, and partner interview guide—SUD Programs	80	2	1.5	360	120
Attachment G. Program managers, staff, and partner interview guide—Whole Family Approach Programs	20	2	1.5	45	15
Attachment K–1. 12-month Follow-Up Participant Interview	4,300	1	0.5	2,149.5	717
Attachment L. Program Managers, Staff, and Partners Interview Guide	200	2	1.5	300	99
Attachment M. Participant Case Study Interview Guide	84	1	1.5	126	42
Attachment N. Program Staff Case Study Interview Guide	84	1	1	84	28
Attachment O. Program Staff Survey	300	1	0.5	150	50

Estimated Total Annual Burden Hours: 1,464.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Section 413 of the Social Security Act as amended by the FY 2017 Consolidated Appropriations Act, 2017 (Public Law 115–31).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–15633 Filed 7–20–22; 8:45 am]

BILLING CODE 4184–09–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No. 0970–0538]

Submission for OMB Review; Head Start Connects: A Study of Family Support Services

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services seeks approval to collect information about how Head Start programs coordinate family support services. Information will be collected from Head Start staff members via surveys and focus groups.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

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. You can also obtain copies of the proposed collection of information by emailing *OPREinfocollection@acf.hhs.gov.* All emailed requests should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The purposes of the data collection for Head Start Connects are to build knowledge about how Head Start programs (Head Start or Early Head Start grantees, delegate agencies, and staff) coordinate family support services for parents/guardians; the characteristics of Head Start programs and staff members involved in family support services coordination; the job characteristics, work activities, and well-being of Head Start family support services staff members; and how Head Start programs can improve coordination of family support services. The data collection will build on information collected previously through case studies at six Head Start sites (OMB #0970–0538). Proposed data collection activities include three components. First, a web-based survey of a nationally-representative sample of program directors will collect program information, including contact information for family and community partnerships managers and for family support services staff members needed for other data collection components. Second, an in-depth web-based survey of family and community partnerships managers identified by program directors will collect information about Head Start programs' structures and services for providing supports to parents and families; and the demographic characteristics, experiences, job characteristics, and well-being of managers who supervise family support services staff members. Third, three data collection activities will gather information from family support services staff members. First, an in-depth web-based survey, will gather information about the structures and services that Head Start programs have for providing supports to parents and families; how family support services staff members reach out to and engage families in family support services; how family support services staff members work with families; and the demographic characteristics, experiences, job characteristics, and well-being of staff members who provide family support services. Second, brief web-based daily snapshot surveys will supplement the in-depth survey and will collect additional information about specific daily work activities and well-being, providing more fine-grained detail about workdays of family support services staff members. Third, focus groups will be conducted with a sample of family support services staff to collect information about innovations and ideas for improving how Head Start programs coordinate and individualize family support services.

Respondents: Head Start program directors, Head Start family and community partnerships managers, and Head Start family support services staff members.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total/annual burden (in hours)
Survey of Head Start directors	470	1	0.5	235
Survey of Head Start family and community partnerships managers	423	1	0.75	317
Survey of Head Start family support services staff members	1,692	1	0.75	1,269
Daily Snapshot Survey of Head Start family support services staff members	1,692	6	0.1	1,015
Focus Groups of Head Start family support services staff members	60	1	1.25	75

Estimated Total Annual Burden Hours: 2,911.

Authority: Section 640(a)(2)(D) and section 649 of the Improving Head Start for School Readiness Act of 2007.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–15562 Filed 7–20–22; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Tribal Maternal, Infant, and Early Childhood Home Visiting Program Form 2: Grantee Performance Measures (OMB #0970–0500)

AGENCY: Office of Child Care; Administration for Children and Families; Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension of the ACF-Tribal Maternal, Infant, and Early Childhood Home Visiting (Tribal MIECHV) Program Form 2: Grantee Performance Measures (Office of Management and Budget (OMB)) #0970–0500; Expiration date February 28, 2023). There are no changes requested to the form.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act (PRA) of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov*. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The MIECHV Program authorizes the Secretary of the Health and Human Services (HHS) (in section 511(h)(2)(A)) to award grants to Indian tribes (or a consortium of Indian tribes), tribal organizations, or urban Indian organizations to conduct an early childhood home visiting program. The legislation set aside 3 percent of the total MIECHV program appropriation for grants to tribal entities. Tribal MIECHV grants, to the greatest extent practicable, are to be consistent with the requirements of the MIECHV grants to states and jurisdictions and include conducting a needs assessment and establishing quantifiable, measurable benchmarks.

The ACF, Office of Child Care (OCC), in collaboration with the Health Resources and Services Administration (HRSA), Maternal and Child Health Bureau (MCHB), awards grants for the Tribal MIECHV Program. The Tribal MIECHV grant awards support 5-year cooperative agreements to conduct community needs assessments; plan for and implement high-quality, culturally relevant, evidence-based home visiting programs in at-risk tribal communities; collect and report on performance measures; and participate in research and evaluation activities to build the knowledge base on home visiting among Native populations.

Specifically, the MIECHV legislation requires that State and Tribal MIECHV grantees collect performance data to measure improvements for eligible families in six specified areas (referred to as ''benchmark areas'') that encompass the major goals of the program. These include:

1. Improved maternal and newborn health;
2. Prevention of child injuries, child abuse, neglect, or maltreatment, and reduction in emergency department visits;
3. Improvement in school readiness and achievement;
4. Reduction in crime or domestic violence;
5. Improvement in family economic self-sufficiency; and
6. Improvement in the coordination and referrals for other community resources and supports.

Tribal MIECHV grantees are required to propose a plan for meeting the benchmark requirements specified in the legislation and must report on improvement in constructs under each benchmark area. The Tribal Home Visiting (HV) Form 2 provides a template for Tribal MIECHV grantees to report data on their progress in improving performance under the six benchmark areas, as stipulated in the legislation.

ACF will continue to use Tribal HV Form 2 to:

- Track and improve the quality of benchmark measures data submitted by the Tribal grantees;
- Improve program monitoring and oversight;
- Improve rigorous data analyses that help to assess the effectiveness of the programs and enable ACF to better monitor projects; and
- Ensure adequate and timely reporting of program data to relevant federal agencies and stakeholders including Congress and members of the public.

Respondents: Tribal MIECHV Program Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Tribal MIECHV Form 2	23	1	500	11,500

Estimated Total Annual Burden Hours: 11,500.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: The Bipartisan Budget Act of 2018 (Public Law 115–123). Section 511(h)(2)(A) of Title V of the Social Security Act.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–15632 Filed 7–20–22; 8:45 am]

BILLING CODE 4184–77–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0528]

Evaluation of Therapeutic Equivalence; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Evaluation of Therapeutic Equivalence.'' The draft guidance would explain FDA's therapeutic equivalence evaluations, including the assignment of therapeutic equivalence codes, if finalized as written. FDA's therapeutic equivalence evaluations are listed for multisource prescription drug products approved under the Federal Food, Drug, and Cosmetic Act (FD&C Act) in the active section of the Approved Drug Products With Therapeutic Equivalence Evaluations (commonly known as the Orange Book). These therapeutic equivalence evaluations have been prepared to serve as public information and advice to state health agencies, prescribers, and pharmacists to promote public education in the area of drug product selection and to foster containment of health care costs.

DATES: Submit either electronic or written comments on the draft guidance by September 19, 2022 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–0528 for ''Evaluation of Therapeutic Equivalence.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Susan Levine, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1674, Silver Spring, MD 20993–0002, 240–402–7936, *Susan.Levine@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Evaluation of Therapeutic Equivalence.'' The draft guidance would explain FDA's therapeutic equivalence evaluations, including the assignment of therapeutic equivalence codes. Therapeutic equivalents are approved drug products that are pharmaceutical equivalents for which bioequivalence has been demonstrated, and that can be expected to have the same clinical effect and safety profile when administered to patients under the conditions specified in the labeling.

FDA's therapeutic equivalence evaluations are listed for multisource prescription drug products approved under section 505 of the FD&C Act (21 U.S.C. 355) in the active section of the Approved Drug Products With Therapeutic Equivalence Evaluations (commonly known as the Orange Book). These therapeutic equivalence evaluations have been prepared to serve as public information and advice to state health agencies, prescribers, and pharmacists to promote public education in the area of drug product selection and to foster containment of health care costs. For example, the Orange Book can assist in the establishment of formularies that States and other entities may use in determining when drug products may be substituted for one another. If lower-cost, therapeutically equivalent drug products are available, American consumers are more likely to receive savings on these products without a sacrifice in the quality of treatment.

In the **Federal Register** of June 1, 2020 (85 FR 33165), FDA announced the establishment of a public docket to solicit comments on the Orange Book, including questions related to the presentation of information on therapeutic equivalence (*e.g.,* ''How useful is the second letter of a therapeutic equivalence evaluation code?''), which also relate to the content of this guidance. FDA is continuing to consider the comments to this docket.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Evaluation of Therapeutic Equivalence.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this draft guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this draft guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR 10.30 have been approved under OMB control number 0910–0191.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: July 18, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–15612 Filed 7–20–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0634]

Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Oncologic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on September 22, 2022, from 9 a.m. to 6 p.m. Eastern Time and September 23, 2022, from 9 a.m. to 1:15 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2022–N–0634. The docket will close on September 21, 2022. Submit either electronic or written comments on this public meeting by September 21, 2022. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 21, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 21, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before September 8, 2022, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is canceled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–N–0634 for ''Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the

claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: She-Chia Chen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 240–402–5343, Fax: 301–847–8533, *ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. During the first session of September 22, 2022, the committee will discuss new drug application (NDA) 215643, for poziotinib tablets, submitted by Spectrum Pharmaceuticals, Inc. The proposed indication (use) for this product is for the treatment of patients with previously treated, locally advanced or metastatic non-small cell lung cancer (NSCLC) harboring HER2 exon 20 insertion mutations. Select patients with NSCLC for treatment with poziotinib based on the presence of HER2 exon 20 insertion mutations using an FDA-approved test. During the second session of September 22, 2022, the committee will hear an update on new drug application (NDA) 214383, for PEPAXTO (melphalan flufenamide) for injection, submitted by Oncopeptides A.B. This product was approved under 21 CFR 314.500 (subpart H, accelerated approval regulations) for use in combination with dexamethasone for the treatment of adult patients with relapsed or refractory multiple myeloma who have received at least four prior lines of therapy and whose disease is refractory to at least one proteasome inhibitor, one immunomodulatory agent, and one CD38-directed monoclonal antibody. The confirmatory trial demonstrated a worse overall survival and failed to verify clinical benefit. Confirmatory studies are post-marketing studies to verify and describe the clinical benefit of a drug after it receives accelerated approval. Based on the updates provided, the committee will have a general discussion focused on next steps for the product.

On September 23, 2022, the committee will hear an update on new drug application (NDA) 211155, for COPIKTRA (duvelisib) capsule, submitted by Secura Bio, Inc. This product was approved under section 505(b) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) for use in the treatment of adult patients with relapsed or refractory chronic lymphocytic leukemia or small lymphocytic lymphoma after at least two prior therapies. The update includes the final overall survival data from the DUO trial (IPI–145–07) submitted in response to post-marketing requirement 3494–3 detailed in the September 24, 2018 approval letter, available at *https://www.accessdata.fda.gov/drugsatfda_docs/appletter/2018/211155Orig2s000ltr.pdf.* Based on the updated overall survival information along with the safety data with duvelisib, the committee will discuss a current assessment of benefit-risk.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before September 8, 2022, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 11:40 a.m. to 12:10 p.m. and 4:30 p.m. to 5 p.m. Eastern Time on September 22, 2022. Oral presentations from the public will be scheduled between approximately 11:45 a.m. to 12:15 p.m. Eastern Time on September 23, 2022. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 30, 2022. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 31, 2022.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact She-Chia Chen (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 18, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–15609 Filed 7–20–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–P–1248]

Determination That XYLOCAINE (Lidocaine Hydrochloride) Topical Solution 4%, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) has determined that XYLOCAINE (lidocaine hydrochloride), Topical Solution 4%, was not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: David Faranda, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6258, Silver Spring, MD 20993–0002, 301–796–8767, *David.Faranda@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to FDA's approval of an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

XYLOCAINE (lidocaine hydrochloride) Topical Solution 4%, is the subject of NDA 010417, held by Fresenius Kabi USA, LLC, and initially approved on May 7, 1959. XYLOCAINE is indicated for the production of topical anesthesia of the mucous membranes of the respiratory tract or the genito-urinary tract.

In a letter dated January 29, 2018, Fresenius Kabi USA, LLC, requested that FDA withdraw approval of NDA 010417 for XYLOCAINE (lidocaine hydrochloride). In the **Federal Register** of October 29, 2018 (83 FR 54355 at 54356), FDA announced that it was withdrawing approval of NDA 010417 as of November 28, 2018. This product is identified as discontinued in the Orange Book.

Lyne Laboratories, Inc., submitted a citizen petition dated December 2, 2021 (Docket No. FDA–2021–P–1248), under 21 CFR 10.30, requesting that the Agency determine whether XYLOCAINE (lidocaine hydrochloride) Topical Solution 4%, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that XYLOCAINE (lidocaine hydrochloride) Topical Solution 4%, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that this drug product was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of XYLOCAINE (lidocaine hydrochloride) Topical Solution 4 percent, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list XYLOCAINE (lidocaine hydrochloride) Topical Solution 4%, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for this drug product may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: July 14, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–15594 Filed 7–20–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0219]

Human Prescription Drug and Biological Products—Labeling for Dosing Based on Weight or Body Surface Area for Ready-to-Use Containers—''Dose Banding''; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Human Prescription Drug and Biological Products—Labeling for Dosing Based on Weight or Body Surface Area for Ready-to-Use Containers—'Dose Banding'.'' The guidance is intended to assist applicants in incorporating dose banding information into the drug

labeling provided in a new drug application (NDA) submitted under the Federal Food, Drug, and Cosmetic Act (FD&C Act), a biologics license application (BLA) submitted under the Public Health Service Act (PHS Act), or a supplement to one of these approved applications when an applicant proposes to develop ready-to-use containers with a range of different strengths and seeks to incorporate dose banding information into the prescribing information of the proposed drug product based on dosing information of a previously approved drug product that is based on weight or body surface area (BSA).

DATES: Submit either electronic or written comments on the draft guidance by September 19, 2022 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–0219 for ''Human Prescription Drug and Biological Products—Labeling for Dosing Based on Weight or Body Surface Area for Ready-to-Use Containers—'Dose Banding'.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or 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 draft guidance document.

FOR FURTHER INFORMATION CONTACT: Chris Wheeler, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3330, Silver Spring, MD 20993–0002, 301–796–0151; or Stephen Ripley 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 draft guidance for industry entitled ''Human Prescription Drug and Biological Products—Labeling for Dosing Based on Weight or Body Surface Area for Ready-to-Use Containers—'Dose Banding'.'' This guidance provides recommendations for incorporating dose banding information into the drug labeling of an NDA submitted under section 505(b) of the FD&C Act (21 U.S.C. 355(b)), a BLA submitted under section 351(a) of the PHS Act (42 U.S.C. 262(a)), or a supplement to one of these approved applications. The recommendations and examples in this guidance apply when an applicant (1) proposes to develop ready-to-use containers with a range of different strengths and (2) seeks to incorporate dose banding information into the prescribing information of the proposed drug product based on dosing information of a previously approved drug product that is based on weight or BSA.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Human Prescription Drug and Biological Products—Labeling for Dosing Based on Weight or Body Surface Area for Ready-to-Use

Containers—'Dose Banding'.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 201 have been approved under OMB control number 0910–0572; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; and the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: July 14, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–15523 Filed 7–20–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[OMB No. 0906–xxxx–New]

Agency Information Collection Activities: Proposed Collection: Public Comment Request Information Collection Request Title: Healthy Start Evaluation and Capacity Building Support

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, as described below, or any other aspect of the ICR.

DATES: Comments on this ICR must be received no later than September 19, 2022.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or by mail to the HRSA Information Collection Clearance Officer, Room 14N–39, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the acting HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Healthy Start Evaluation and Capacity Building Support, OMB No. 0906–xxxx–New.

Abstract: The National Healthy Start Program, authorized by 42 U.S.C. 254c–8 (§ 330H of the Public Health Service Act) and funded through HRSA's Maternal and Child Health Bureau, has the goal of reducing disparities in maternal and infant health. The program began as a demonstration project with 15 grantees in 1991 and has expanded over the past 3 decades to 101 grantees across 35 states, Washington, DC, and Puerto Rico. Healthy Start grantees operate in communities with rates of infant mortality at least 1.5 times the U.S. national average, or with high rates of other adverse perinatal outcomes (*e.g.,* low birthweight, preterm birth). Grantees may also qualify for the program if their project areas meet other relevant criteria (*e.g.,* high rates of diabetes, obesity, or tobacco use during pregnancy; low utilization of prenatal care in the first trimester; no utilization of prenatal care during pregnancy) that demonstrate disparities in health outcomes for pregnant women in their communities. Healthy Start programs are located in communities that are geographically, racially, ethnically, and linguistically diverse. Healthy Start covers services during the perinatal period (before, during, after pregnancy) and follows the women, infants, and fathers/partners through 18 months after the end of the pregnancy. The Healthy Start program uses a life course approach that includes women's health, family health and wellness, and community/population health.

HRSA seeks to implement a mixed-methods evaluation to assess the effectiveness of the program on individual, organizational, and community-level outcomes. Data collection instruments will include the (1) Healthy Start Program Survey, (2) Healthy Start Network Survey, (3) Healthy Start Participant Survey, and (4) Healthy Start Stakeholder Interview Guide. These instruments have been specifically designed to be non-duplicative. Using previously approved content, the Healthy Start Program Survey is designed to collect information on the experiences of all 101 grantee programs related to program infrastructure, services/activities, participants, community partnerships, new maternal and fatherhood initiatives, and health equity. The information collected in the survey will allow the Healthy Start grantees to better assess risk, identify needed services, provide appropriate follow-up activities to program participants, and improve overall service delivery and quality.

The two other surveys and interview guide will be administered to a subset of 15 grantees, their community partners, and participants. The Healthy Start Network Survey focuses on understanding the participation of members in the Healthy Start Community Action Networks (CANs) [1] and collaborations within the CANs to improve maternal, infant, and family outcomes within the Healthy Start communities. Results from the survey will help the Healthy Start programs and their CANs identify areas of strength and opportunities for further collaborations, understand how well the CAN members are working together to serve women and their families, and whether they are supporting the programs in addressing the participants' greatest needs. The Healthy Start Participant Survey is designed to collect information about the experiences of the Healthy Start participants with the program and assess whether the programs are meeting their needs. The Healthy Start grantees can use this

[1] A CAN is an existing, formally organized partnership of organizations and individuals. The CAN represents consumers and appropriate agencies which unite in an effort to collectively apply their resources to the implementation of one or more common strategies to achieve a common goal within that project area.

information to identify areas to strengthen the services provided to the participants. The Healthy Start Stakeholder Interview Guide is designed to collect more in-depth information about the Healthy Start services, the new maternal health and fatherhood initiatives, CAN activities, and activities developed to improve the Healthy Start benchmarks and achieve health equity.

Need and Proposed Use of the Information: The purpose of the data collection instruments is to obtain consistent information across all grantees about Healthy Start, its operations and outcomes. The data will be used to (1) conduct ongoing performance monitoring of the program; (2) provide credible and rigorous evidence of program effect on outcomes; (3) meet program needs for accountability, programmatic decision-making, and ongoing quality assurance; and (4) strengthen the evidence base and identify best and promising practices for the program to support sustainability, replication, and dissemination of the program.

Likely Respondents: Respondents will include project directors and staff for the Healthy Start Program Survey, members of the CANs for the Healthy Start Network Survey, program participants for the Healthy Start Participant Survey, and program and administrative staff for the Healthy Start Stakeholder Interview Guide.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

The total annual burden hours estimated for this ICR are summarized in the table below. The total number of responses was multiplied by the average burden per response and summed to produce the total annualized burden hours, which is estimated to be 600 hours. A break-down of these hours is detailed in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Healthy Start Program Survey	101	1	101	1.00	101
Healthy Start Network Survey	[2] 600	1	600	0.33	198
Healthy Start Participant Survey.	[3] 750	1	750	0.25	188
Healthy Start Stakeholder Interview Guide	[4] 150	1	150	0.75	113
Total	1,601		1,601		600

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–15570 Filed 7–20–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Charter Renewal for the Advisory Commission on Childhood Vaccines

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), HHS is hereby giving notice that the charter for the Advisory Commission on Childhood Vaccines (ACCV) has been renewed. The effective date of the renewed charter is July 21, 2022.

FOR FURTHER INFORMATION CONTACT: CDR George Reed Grimes, M.D., MPH, Designated Federal Officer, Health Systems Bureau, HRSA, 5600 Fishers Lane, 08N186A, Rockville, Maryland 20857; (301)443–6634; or *ACCV@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The ACCV provides advice and recommendations to the Secretary of HHS (Secretary) on policy, program development, and other matters of significance concerning the activities under 2119 of the Public Health Service Act (the Act) (42 U.S.C. 300aa-19), as enacted by Public Law 99–660, and as subsequently amended. The ACCV advises the Secretary on issues related to implementation of the National Vaccine Injury Compensation Program. Other activities of the ACCV include: recommending changes in the Vaccine Injury Table at its own initiative or as the result of the filing of a petition; advising the Secretary in implementing section 2127 of the Act regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveying federal, state, and local programs and activities related to gathering information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b) of the Act; advising the Secretary on the methods of obtaining, compiling, publishing, and using credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; consulting on the development or revision of Vaccine Information Statements; and recommending to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

The renewed charter for the ACCV was approved on July 1, 2022. The filing

[2] This is the maximum number of responses for this data collection instrument.

[3] Ibid.

[4] Ibid.

date is July 21, 2022. Renewal of the ACCV charter gives authorization for the Commission to operate until July 21, 2024.

A copy of the ACCV charter is available on the ACCV's website at *https://www.hrsa.gov/advisory-committees/vaccines/index.html.* A copy of the charter also can be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The website address for the FACA database is *https://www.facadatabase.gov/.*

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–15573 Filed 7–20–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Youth Regional Treatment Center Aftercare Program

Announcement Type: New.

Funding Announcement Number: HHS–2023–IHS–YRTC–0001.

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.654.

Key Dates

Application Deadline Date: September 19, 2022.

Earliest Anticipated Start Date: October 4, 2022.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting applications for a cooperative agreement for Youth Regional Treatment Center Aftercare Programs (Short Title: Youth Aftercare). This program is authorized under the Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); and the Indian Health Care Improvement Act, 25 U.S.C. 1665a and 1665g. This program is described in the Assistance Listings located at *https://sam.gov/content/home* (formerly known as the CFDA) under 93.654.

Background

As a whole, the American Indian and Alaska Native (AI/AN) population is notably young, as 20.3 percent are youth, compared to the 16.6 percent of the non-AI/AN population. Among the total 2.3 million AI/AN youth, 46.7 percent are adolescents, 12 to 17 years of age, and 53.3 percent are young adults, 18 to 24 years of age. For purposes of examining youth outcomes, DBH applies the total youth age range, 12 to 24 years, for consistency with Tribal, Federal, and United Nations standards. For purposes of this effort, Youth Regional Treatment Centers (YRTCs) serve youth according to ages that their facilities are allowed to admit. There are multiple indicators that the behavioral health treatment requirements for AI/AN youth are unaddressed at this time. As one example, according to the CDC, as of 2020, AI/AN adolescent and young adult suicide rates have reached all-time highs. The suicide rate for youth, 15 to 24 year olds, is now 24.6 per 100,000; 1.9 times higher than the average of their non-AI/AN peers.

Meanwhile, AI/AN youth continue to experience an unprecedented crisis of unaddressed behavioral health treatment needs and requirements. The persistent risk is due to many personal and community factors, as well as notable structural factors, which undermine the development of an appropriately-fitted continuum of care (CoC) for AI/AN youth. As of 2021, the Division of Behavioral Health (DBH) completed an evaluation of a pilot Youth Aftercare project with one Tribal and one Federal YRTC. The pilot evaluation, Evaluation of the Youth Regional Treatment Center Aftercare Pilot Project, revealed an urgent need for examining the CoC and its effects on long-term outcomes among youth. The pilot evaluation was provided to all twelve YRTCs for their review before publication, as it provides a framework for planning the future AI/AN youth CoC, and the objectives of this effort. The goal in reframing the CoC is to address treatment efficacy, operational efficiency, and organizational suitability to optimally affect the physical, psychological, spiritual, cultural, familial, and social factors that sustain safety, sobriety, and employability outcome goals.

This program will support DBH and the YRTCs efforts to develop and sustain a CoC that fully supports explicit, measurable outcomes of safety, sobriety, and employability among AI/AN youth after discharge from a YRTC. The benefit of focusing on employability includes the array of factors that affirm whole-person wellness, community engagement, long-term contributions of the individual back to the community, and the therapeutic experience of developing, testing, and generalizing personal capabilities.

Purpose

The goal of the Youth Aftercare cooperative agreement is to help AI/AN youth pursue and sustain safety, sobriety, and employability after release from a YRTC. While aftercare support services may not exist in a youth's home community, the YRTC can lead the development of effective aftercare methods. The YRTC Aftercare cooperative agreement awardee (''awardee'') will pursue the above stated goal in each AI/AN client who separates from their respective YRTCs. In addition to the stated goal, a focus of this funding opportunity is to understand and overcome aftercare management and performance barriers that affect the capacity of YRTCs and the IHS to develop effective and responsive solutions within the scope of the AI/AN Youth CoC, given AI/AN youth's behavioral health treatment requirements.

In alignment with the IHS 2019–2023 Strategic Plan Goal 1: To ensure that comprehensive, culturally appropriate personal and public health services are available and accessible to AI/AN people, the awardees will work closely with community-based services/programs to strengthen partnerships that affect youths' ability to use coordinated services within their CoC. The awardee will examine and monitor its operational requirements, such as staffing, data collection, case coordination tools, and communication tools to readily inform the IHS of changing requirements and challenges. Such examinations may require engagements with the IHS, technical advisors, or others who can provide suitable analyses and planning with the YRTCs.

The IHS will award funding for the provision of aftercare services for two YRTCs, which are operated by either a Tribe or a Tribal Organization.

Required Activities

The awardee is required to (1) design inpatient case management plans that focus on achieving the whole scope of treatment objectives and outcomes that will be addressed within the inpatient and Aftercare Domain (*i.e.,* Outpatient Therapy, Independent Aftercare, and Personal Efficacy Programs) described in the pilot evaluation report; (2) establish and sustain a full-time aftercare coordinator; (3) coordinate and communicate with aftercare clients their specific post-inpatient therapeutic service plans, and their appropriate use of such services within the scope of whole-person wellness goals; (4) arrange or provide counseling and coaching (in-person and/or remote) to the client to help develop measurable improvements in clients' personal efficacy in achieving goals; (5) reinforce the appropriate treatment engagement and services

specific to each client; (6) cooperate with the IHS to test technologies that may support the data and therapy communication that supports the program goal; (7) track the content and effort in communications between the client and the community resources to increase success of referrals and sustain active and clear partnerships with the community or other service entities; and (8) work with the IHS to collect and report data that accurately describes the progress of the client throughout their aftercare, a minimum of 12 months, and in support of cooperative annual program evaluations. The awardee may pursue activities not stated here, as they align with the AI/AN Youth Behavioral Health Continuum of Care Protocols, described in the pilot aftercare evaluation.

II. Award Information

Funding Instrument—Cooperative Agreement

Estimated Funds Available

The total funding identified for fiscal year (FY) 2023 is approximately $1,200,000. Individual award amounts for the first budget year are anticipated to be $600,000. The funding available for competing and subsequent continuation awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

The IHS anticipates issuing two awards under this program announcement.

Period of Performance

The period of performance is for 5 years.

Cooperative Agreement

Cooperative agreements awarded by the Department of Health and Human Services (HHS) are administered under the same policies as grants. However, the funding agency, IHS, is anticipated to have substantial programmatic involvement in the project during the entire period of performance. Below is a detailed description of the level of involvement required for the IHS.

Substantial Agency Involvement Description for Cooperative Agreement

The IHS DBH will monitor the overall progress of the awardee's execution of the requirements of the award as well as their adherence to the terms and conditions of the cooperative agreement. The IHS will collaborate with awarded YRTCs to develop and refine an AI/AN Youth Behavioral Health Continuum of Care Protocol, including the use of potential methods and technologies that reinforce success in aftercare practices. This includes providing guidance for required reports, planning or developing tools and other service or technology products, reviewing evidence of design efficacy, interpreting program findings, assisting with evaluations, site visits, and overcoming difficulties or performance issues encountered.

III. Eligibility Information

1. Eligibility

To be eligible for this funding opportunity, an applicant must be a current, IHS-funded YRTC, operated by one of the following as defined by 25 U.S.C. 1603:

- A federally recognized Indian Tribe as defined by 25 U.S.C. 1603(14). The term ''Indian Tribe'' means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- A Tribal organization as defined by 25 U.S.C. 1603(26). The term ''Tribal organization'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(l)): ''Tribal organization'' means the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: provided that, in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant. Applicant shall submit letters of support and/or Tribal Resolutions from the Tribes to be served.

The program office will notify any applicants deemed ineligible.

Note: Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal Resolutions, proof of nonprofit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

Applications with budget requests that exceed the highest dollar amount outlined under Section II Award Information, Estimated Funds Available, or exceed the period of performance outlined under Section II Award Information, Period of Performance, are considered not responsive and will not be reviewed. The Division of Grants Management (DGM) will notify the applicant.

Additional Required Documentation

Tribal Resolution

The DGM must receive an official, signed Tribal Resolution prior to issuing a Notice of Award (NoA) to any Tribe or Tribal organization selected for funding. An applicant that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. However, if an official signed Tribal Resolution cannot be submitted with the application prior to the application deadline date, a draft Tribal Resolution must be submitted with the application by the deadline date in order for the application to be considered complete and eligible for review. The draft Tribal Resolution is not in lieu of the required signed resolution but is acceptable until a signed resolution is received. If an application without a signed Tribal Resolution is selected for funding, the applicant will be contacted by the Grants Management Specialist (GMS) listed in this funding announcement and given 90 days to submit an official signed Tribal Resolution to the GMS. If the signed Tribal Resolution is not received within 90 days, the award will be forfeited.

Applicants organized with a governing structure other than a Tribal council may submit an equivalent document commensurate with their governing organization.

Proof of Nonprofit Status

Organizations claiming nonprofit status must submit a current copy of the 501(c)(3) Certificate with the application.

IV. Application and Submission Information

Grants.gov uses a Workspace model for accepting applications. The Workspace consists of several online forms and three forms in which to upload documents—Project Narrative, Budget Narrative, and Other Documents. Give your files brief descriptive names. The filenames are key in finding specific documents during the objective review and in processing awards. Upload all requested and optional documents individually, rather than combining them into a package. Creating a package creates confusion when trying to find specific documents. Such confusion can contribute to delays in processing awards, and could lead to lower scores during the objective review.

1. Obtaining Application Materials

The application package and detailed instructions for this announcement are available at *https://www.Grants.gov.*

Please direct questions regarding the application process to *DGM@ihs.gov.*

2. Content and Form Application Submission

Mandatory documents for all applicants include:

- Application forms:

1. SF–424, Application for Federal Assistance.

2. SF–424A, Budget Information—Non-Construction Programs.

3. SF–424B, Assurances—Non-Construction Programs.

4. Project Abstract Summary form.

- Project Narrative (not to exceed 10 pages). See Section IV.2.A, Project Narrative for instructions.
- Budget Narrative (not to exceed five pages). See Section IV.2.B Budget Narrative for instructions.
- Timeline for first year only (one page).
- Work Plan for first year only.
- Tribal Resolution or Tribal Letter (only required for Tribes and Tribal organizations).
- Letter(s) of Commitment:

1. Local Organizational Partners;

2. Community Partners, as needed to meet objectives;

3. For Tribal organizations: from the board of directors (or relevant equivalent);

4. For UIOs: from the board of directors (or relevant equivalent).

- 501(c)(3) Certificate (if applicable).
- Biographical sketches for all key personnel (not to exceed one page each).
- Organizational Chart (one page).
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL), if applicant conducts reportable lobbying.
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required in order to receive IDC).
- Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).

Acceptable forms of documentation include:

1. Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or

2. Face sheets from audit reports. Applicants can find these on the FAC website at *https://facdissem.census.gov/.*

Public Policy Requirements

All Federal public policies apply to IHS grants and cooperative agreements. Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS. See *https://www.hhs.gov/grants/grants/grants-policies-regulations/index.html.*

Requirements for Project and Budget Narratives

A. Project Narrative

This narrative should be a separate document that is no more than 10 pages and must: (1) have consecutively numbered pages; (2) use black font 12 points or larger (applicants may use 10 point font for tables); (3) be single-spaced; (4) and be formatted to fit standard letter paper (8½ x 11 inches). Do not combine this document with any others.

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria) and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the overall page limit, the application will be considered not responsive and will not be reviewed. The 10-page limit for the project narrative does not include the work plan, standard forms, Tribal Resolutions, budget, budget narratives, and/or other items. Page limits for each section within the project narrative are guidelines, not hard limits.

There are four parts to the project narrative:

Part 1—Statement of Need
Part 2—Program Plan (Objectives and Activities)
Part 3—Organizational Capacity
Part 4—Program Evaluation (Data Collection and Reporting)

See below for additional details about what must be included in the narratives. The page limits below are for each narrative and budget submitted.

Part 1: Statement of Need (Limit—2 Pages)

The statement of need describes the history and catchment area currently served by the applicant, including Tribal communities (''community'' means the applicant's Tribe, village, Tribal organization, or consortium of Tribes and/or Tribal organizations). The statement of need provides the facts and evidence that support the need for the project and establishes that the YRTC understands the problems related to the scope and gaps in aftercare services and can reasonably address gaps through specific methods. For additional information regarding the statement of need, refer to Section V.1.A, Statement of Need.

Part 2: Program Plan (Objectives and Activities) (Limit—4 Pages)

State the purpose, goals, and objectives of your proposed project. Clearly state how proposed activities address the needs detailed in the statement of need. Describe fully and clearly the applicant's plans to meet the seven required activities in section ''Required Activities.'' For additional information regarding program planning, refer to Section V.1.B, Program Plan (Objectives and Activities).

Part 3: Organizational Capacity (Limit—2 Pages)

This section should describe your organization's significant program activities and accomplishments over the past three years that are related to the purpose and goals of this program. Current staffing levels should also be outlined. Any possible future staff functions (specifically if funded under this award) should be justified based on functional need or deficit. Include an organizational chart that describes the capacity of your organization. For additional information regarding organizational capacity, refer to Section V.1.C, Organizational Capacity.

Part 4: Program Evaluation (Data Collection & Reporting) (Limit—2 Pages)

This section of the project narrative should describe your organization's plan for gathering local and client-specific non-identifiable data, submitting data requirements, and documenting the applicant's ability to ensure accurate digital data collection

and reporting on youth's aftercare experiences that will support and demonstrate YRTC Aftercare Program activities. Reporting elements from the aftercare programs will pertain to activities, processes, barriers, and outcomes, as described in the background of this announcement. Include any partners who will assist in evaluation efforts if separate from the primary applicant.

For additional information regarding program evaluation, data collection, and reporting, refer to Section V.1.D, Program Evaluation (Data Collection & Reporting).

Awardees will work with the IHS to collect and report data that accurately describes the progress of the client throughout their aftercare, a minimum of 12 months, and in support of cooperative annual program evaluations. The data reports will include a semi-annual and annual report. The annual program evaluation will include meetings to discuss the data and its analysis, and investigate explanations of the data in support of program improvements.

B. Budget Narrative (Limit—5 Pages)

Provide a budget narrative that explains the amounts requested for each line item of the budget from the SF–424A (Budget Information for Non-Construction Programs) for the first year of the project. The applicant can submit with the budget narrative a more detailed spreadsheet than is provided by the SF–424A (the spreadsheet will not be considered part of the budget narrative). The budget narrative should specifically describe how each item will support the achievement of proposed objectives. Be very careful about showing how each item in the ''Other'' category is justified. For subsequent budget years (see Multi-Year Project Requirements in Section V.1, Application Review Information, Evaluation Criteria), the additional pages should highlight the changes from the first year or clearly indicate that there are no substantive budget changes during the period of performance. Do NOT use the budget narrative to expand the project narrative. For additional information regarding the budget narrative, refer to the Section V.1.E, Budget Narrative.

3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. Eastern Time on the Application Deadline Date. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at *https://www.grants.gov*). If problems persist, contact Mr. Paul Gettys (*Paul.Gettys@ihs.gov*), Deputy Director, DGM, by telephone at (301) 443–2114. Please be sure to contact Mr. Gettys at least 10 days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

The IHS will not acknowledge receipt of applications.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are allowable up to 90 days before the start date of the award provided the costs are otherwise allowable if awarded. Pre-award costs are incurred at the risk of the applicant.
- The available funds are inclusive of direct and indirect costs.
- Only one cooperative agreement may be awarded per applicant.

6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the *https://www.Grants.gov* website to submit an application. Find the application by selecting the ''Search Grants'' link on the homepage. Follow the instructions for submitting an application under the Package tab. No other method of application submission is acceptable.

If you cannot submit an application through *Grants.gov,* you must request a waiver prior to the application due date. This contact must be initiated prior to the application due date or your waiver request will be denied. Prior approval must be requested and obtained from Mr. Paul Gettys, Deputy Director, DGM. You must send a written waiver request to *DGM@ihs.gov* with a copy to *Paul.Gettys@ihs.gov.* The waiver request must be documented in writing (emails are acceptable) before submitting an application by some other method, and must include clear justification for the need to deviate from the required application submission process.

If the DGM approves your waiver request, you will receive a confirmation of approval email containing submission instructions. You must include a copy of the written approval with the application submitted to the DGM. Applications that do not include a copy of the signed waiver from the Deputy Director of the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m. Eastern Time on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative method.

Please be aware of the following:

- Please search for the application package in *https://www.Grants.gov* by entering the Assistance Listing (CFDA) number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at *https://www.grants.gov*).
- Upon contacting *Grants.gov,* obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to 20 working days.
- Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.
- Applicants must comply with any page limits described in this funding announcement.
- After submitting the application, you will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The IHS will not notify you that the application has been received.

System for Award Management (SAM)

Organizations that are not registered with SAM must access the SAM online registration through the SAM home page at *https://sam.gov.* United States (U.S.) organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active. Please see *SAM.gov* for details on the registration process and timeline. Registration with the SAM is

free of charge but can take several weeks to process. Applicants may register online at *https://sam.gov.*

Unique Entity Identifier

Your *SAM.gov* registration now includes a Unique Entity Identifier (UEI), generated by *SAM.gov*, which replaces the DUNS number obtained from Dun and Bradstreet. *SAM.gov* registration no longer requires a DUNS number.

Check your organization's *SAM.gov* registration as soon as you decide to apply for this program. If your *SAM.gov* registration is expired, you will not be able to submit an application. It can take several weeks to renew it or resolve any issues with your registration, so do not wait.

Check your *Grants.gov* registration. Registration and role assignments in *Grants.gov* are self-serve functions. One user for your organization will have the authority to approve role assignments, and these must be approved for active users in order to ensure someone in your organization has the necessary access to submit an application.

The Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), requires all HHS recipients to report information on sub-awards. Accordingly, all IHS grantees must notify potential first-tier sub-awardees that no entity may receive a first-tier sub-award unless the entity has provided its UEI number to the prime awardee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

Additional information on implementing the Transparency Act, including the specific requirements for SAM, are available on the DGM Grants Management, Policy Topics web page at *https://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

Possible points assigned to each section are noted in parentheses. The project narrative and budget narrative should include only the first year of activities; information for multi-year projects should be included as a separate document. See ''Multi-year Project Requirements'' at the end of this section for more information. The project narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to fully understand the project. Attachments requested in the criteria do not count toward the page limit for the narratives. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

1. Evaluation Criteria

Applications will be reviewed and scored according to the quality of responses to the required application components in the following Sections A–E. The number of points after each heading is the maximum number of points a review committee may assign to that section. Although scoring weights are not assigned to individual numbers, responses to each number are assessed in deriving the overall section score.

A. Statement of Need (20 Points)

1. Identify the proposed catchment area, which may include demographic information on the population(s) to receive services, *e.g.,* race, ethnicity, federally recognized Tribe(s), socioeconomic status, or other relevant factors, such as substance use rates or health outcomes related to substance use.

2. Describe the organization's existing program as a tribally operated YRTC and what current treatment programs or services are currently being provided by the organization.

B. Program Plan (Objectives and Activities) (30 Points)

Describe the purpose of the proposed project, including a clear statement of goals and objectives, as it relates to the background and purpose described herein. Describe how the program's plan will support the eight required activities. Develop a work plan to serve as a formative guide that identifies the implementation and completion of key elements throughout the life of the project (described in the following numbers 1–4).

1. Develop aftercare case management and aftercare services and tools for youth that will transition from the YRTC and back into community living.

a. Provide ongoing services to youth by increasing partnerships with service providers and community programs at the community level. Please describe how home visits, site visits, or other community site engagement will be included in case management services.

b. Hire staff to provide YRTC aftercare coordination, or case management, that will establish individualized aftercare support plans for each youth exiting the facility.

c. Improve engagement with families and support systems of youth participating in a YRTC program, such as providing family-care engagement counseling, organizing community volunteers as coaches, or providing travel assistance for family members to increase participation during youth treatment and positive parenting curriculum to parents while their youth is in care and throughout post-treatment.

d. Work with DBH to explore opportunities to test and validate technology tools that support client coordination (*e.g.,* engaging multiple contributors, integrating services, data collection) and safe self-care (*e.g.,* prescribed online content, homework, mindfulness practices, and telehealth services).

2. Establish and formalize partnerships (*e.g.,* MOA, MOU) with local, Tribal, state, and national programs to identify resources and provide a continuum of care for youth in recovery such as:

a. increase access to youth peer-to-peer support in partner community sites;

b. connect youth to peer recovery support specialists, recovery coaches, volunteer mentors from partner communities;

c. work with partner organizations to ensure successful implementation of the proposed project;

d. develop aftercare services, trainings, and practices for cultural competence;

e. identify and connect youth to appropriate academic and recovery supports through partnering educational systems and trainings for completion of academic and employment goals.

3. Based on the guidance in the background section of this announcement, develop aftercare policies, quality improvement measures, best practices, tools, and procedures that ensure and support successful implementation of the proposed project such as:

a. create and train in evidence-based care. This may include how to identify signs of relapse, how to identify signs of mental health distress, how to navigate community referral processes, and how to manage prescription drugs;

b. strengthen the YRTC's ongoing efforts to meet clients' safety and sobriety self-efficacy goals and employability through the support of aftercare treatment in serving AI/AN clients;

c. provide training to support facility compliance with required certifications/accreditations and ongoing improvements in quality, safety, and patient satisfaction;

4. Identify and implement best practices and tools (see Evaluation of the Youth Regional Treatment Center

Aftercare Pilot Project, provided to all YRTCs by DBH) for increasing access to transitional services when the youth moves from the YRTC back to the youth's home community, such as:

a. patient intake, treatment, and aftercare evaluation, as a process that critically examines current aftercare programmatic efforts by collecting and analyzing data that identifies outcomes and serves as a framework for the work plan;

b. assistance with planning for education, referrals to coaches and other vetted volunteer programs, referrals for housing, accompanying youth to outpatient or other community services, accessing culturally appropriate interventions, consultation with employers, in-home evaluations of family or living situations, parenting support, and transitioning to adult services;

c. collect data on treatment progress and outcomes for youth at a minimum of quarterly intervals, as allowed by the period of performance and contact management with the youth;

d. develop, maintain, and collect comprehensive information on youth aftercare practices. This information should focus on evidence-based, promising, and best practices; service delivery; quality improvement; and innovation strategies; and

e. maintain open and consistent communication with the IHS program official on programmatic challenges for meeting the requirements of the award and requests for technical assistance (*i.e.,* monthly calls with IHS and project staff etc.).

C. Organizational Capacity (20 Points)

1. Describe the management capability of the YRTC in administering similar cooperative agreements and projects.

2. Identify staff to maintain open and consistent communication with the IHS program official on any programmatic barriers to meeting the requirements of the award.

3. Identify the department/division that will administer this project. Include a description of this entity, its function, and its placement within the YRTC.

4. Discuss the experience and capacity to provide substantive, culturally appropriate, and competent services to the client, their family, and the communities served.

5. Describe the tools and resources available for the proposed project (*e.g.,* facilities, equipment, information technology systems, and financial management systems).

6. Identify organization(s) that may participate in the proposed project. Describe their roles and responsibilities and demonstrate their commitment to the project. Include a list of these organizations as an attachment item to the application.

7. Describe how project continuity will be maintained if there is a change in the operational environment (*e.g.,* staff turnover, change in project leadership, change in elected officials) to ensure project stability over the life of the grant.

8. Discuss the program business model and its service components in terms of sustainment opportunities and barriers.

9. Provide a list of staff positions for the project including project director, project coordinator/caseworker, and other key personnel, showing the role of each and their level of effort and qualifications. Demonstrate successful project implementation for the level of effort budgeted for the behavioral health staff, project director, project coordinator, and other key staff.

10. Include position descriptions as attachments to the application for the project director, project coordinator/caseworker, and all key personnel. Position descriptions should not exceed one page each.

11. For individuals that are currently on staff, include a biographical sketch for each individual listed as the behavioral health staff, project director, project coordinator, and other key positions. Describe the experience of identified staff who are working to address youth substance use disorder prevention, treatment, and aftercare. Include each biographical sketch as attachments to the project proposal/application. Biographical sketches should not exceed one page per staff member. Do not include any of the following:

a. Personally Identifiable Information;
b. Resumes; or
c. Curriculum Vitae.

D. Program Evaluation (Data Collection and Reporting) (20 Points)

Reporting on this evaluation plan will occur on a semi-annual basis. The IHS will work with grantees at the start of the period of performance to help develop and finalize a reporting and evaluation and performance measurement plan to monitor the progress of the activities implemented, gaps in activities that need to be addressed (based on guidance in the Background section), and outcomes achieved. The IHS will work with the awardees to ensure consistent and integrated data collection, in order to optimize the reporting effort within a semi-annual reporting schedule.

1. Describe proposed data collection capacities in support of ongoing performance measurement and periodic program evaluation. This description should address data collection methods, data sources, data measurement tools, staff roles in data collection and management, and a data collection timeline. The major data categories include (a) prevalence of problems to address; (b) expected effects of service protocols and innovations through interpersonal and technological methods; (c) costs of service providers, training, organization, tools, and resources; (d) expected service competencies by training; (e) scope and frequency of service actions by recipient groups; (f) changes in recipients' perspectives, behaviors, and status (*e.g.,* safety, sobriety, employability); (g) observed gaps in services, competencies, or capabilities; and (h) changes in community-wide practices and plans. Relevant measures would include those that indicate trends in the above categories. Client impacts should be measured on consistent quarterly intervals, such as 3, 6, 9, and 12 months. Other relevant pre-treatment descriptive data would include client protective and risk status in terms of family, years of alcohol or substance use, and associated mentoring, detention, or other notable experiences.

2. Identify the key data collection partners and describe how they will participate in the implementation of the performance management and evaluation plan, even if their work is parallel to the project and not funded by the IHS (*e.g.,* Tribal Epidemiology Centers, local Tribal health boards, universities, consultants, etc.).

3. Describe training, data collection, and evaluation of any competencies that will be monitored and validated among staff, such as the application of counseling or coaching services based on cultural and spiritual competencies.

4. Describe data collection and program reviews that will address key issues in the evaluation of the services provided, focused on the improvement and sustainability of the program. Relevant issues include changes in capabilities for collecting data, analyzing data, monitoring operations, meeting program improvement and sustainment goals, achieving desirable impacts for clients, and sustaining effective services in the future.

5. Discuss any barriers or challenges expected for implementing the plan or collecting relevant data that IHS should monitor to support the program (*e.g.,* adopting performance measures, recruiting and training staff,

participating in technology testing, or participating in evaluation efforts).

6. Describe how the applicant plans to overcome potential barriers. In addition, applicants may describe other measures to be developed or additional data sources and data collection methods that applicants will use.

E. Budget Narrative (10 Points)

1. Based on the budget line items, describe the reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative for budget year one only.

2. Applicants should ensure that the budget narrative aligns with the project narrative. The budget narrative will be considered by reviewers in assessing the applicant's submission, along with the materials in the project narrative. Questions to address in the budget narrative include: What resources or technologies are needed to successfully carry out and manage the project? What other resources are available from the organization? Will new staff be recruited? Will outside consultants be required?

3. For any outside consultants, include the total cost broken down by activity.

Multi-Year Project Requirements

Applications must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project. This attachment will not count as part of the project narrative or the budget narrative.

Additional documents can be uploaded as Other Attachments in *Grants.gov*. These can include:

- Proposed work plan and timeline for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Rate Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).

2. Review and Selection

Each application will be pre-screened for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the Objective Review Committee (ORC) based on the evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds (budget limit, period of performance limit) will not be referred to the ORC and will not be funded. The program office will notify the applicant of this determination.

Applicants must address all program requirements and provide all required documentation.

3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS Division of Behavioral Health within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF–424) of the application.

A. Award Notices for Funded Applications

The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the award, the terms and conditions of the award, the effective date of the award, the budget period, and period of performance. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

B. Approved but Unfunded Applications

Approved applications not funded due to lack of available funds will be held for 1 year. If funding becomes available during the course of the year, the application may be reconsidered.

Note: Any correspondence, other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization, is not an authorization to implement their program on behalf of the IHS.

VI. Award Administration Information

1. Administrative Requirements

Awards issued under this announcement are subject to, and are administered in accordance with, the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards currently in effect or implemented during the period of award, other Department regulations and policies in effect at the time of award, and applicable statutory provisions. At the time of publication, this includes 45 CFR part 75, at *https://www.govinfo.gov/content/pkg/CFR-2020-title45-vol1/pdf/CFR-2020-title45-vol1-part75.pdf.*
- Please review all HHS regulatory provisions for Termination at 45 CFR 75.372, at *https://www.ecfr.gov/cgi-bin/retrieveECFR?gp&SID=2970eec67399fab1413ede53d7895d99&mc=true&n=pt45.1.75&r=PART&ty=HTML&se45.1.75_1372#se45.1.75_1372.*

C. Grants Policy:

- HHS Grants Policy Statement, Revised January 2007, at *https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf.*

D. Cost Principles:

- Uniform Administrative Requirements for HHS Awards, ''Cost Principles,'' located at 45 CFR part 75 subpart E.

E. Audit Requirements:

- Uniform Administrative Requirements for HHS Awards, ''Audit Requirements,'' located at 45 CFR part 75 subpart F.

F. As of August 13, 2020, 2 CFR 200 was updated to include a prohibition on certain telecommunications and video surveillance services or equipment. This prohibition is described in 2 CFR 200.216. This will also be described in the terms and conditions of every IHS grant and cooperative agreement awarded on or after August 13, 2020.

2. Indirect Costs

This section applies to all recipients that request reimbursement of IDC in their application budget. In accordance with HHS Grants Policy Statement, Part II–27, the IHS requires applicants to obtain a current IDC rate agreement and submit it to the DGM prior to the DGM issuing an award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate agreement is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Per 45 CFR 75.414(f) Indirect (F&A) costs, ''any non-Federal entity (NFE) [*i.e.,* applicant] that has never received a negotiated indirect cost rate, . . . may elect to charge a de minimis rate of 10 percent of modified total direct costs

which may be used indefinitely. As described in Section 75.403, 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 the NFE chooses to negotiate for a rate, which the NFE may apply to do at any time.''

Electing to charge a de minimis rate of 10 percent only applies to applicants that have never received an approved negotiated indirect cost rate from HHS or another cognizant federal agency. Applicants awaiting approval of their indirect cost proposal may request the 10 percent de minimis rate. When the applicant chooses this method, costs included in the indirect cost pool must not be charged as direct costs to the grant.

Available funds are inclusive of direct and appropriate indirect costs. Approved indirect funds are awarded as part of the award amount, and no additional funds will be provided.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation at *https://rates.psc.gov/* or the Department of the Interior (Interior Business Center) at *https://ibc.doi.gov/ICS/tribal.* For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under ''Agency Contacts'' or write to *DGM@ihs.gov.*

3. Reporting Requirements

The awardee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions, and/or the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the awardee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports must be submitted electronically by attaching them as a ''Grant Note'' in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please use the form under the Recipient User section of *https://www.grantsolutions.gov/home/getting-started-request-a-user-account/.* Download the Recipient User Account Request Form, fill it out completely, and submit it as described on the web page and in the form.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually. The progress reports are due within 30 days after the reporting period ends (specific dates will be listed in the NoA Terms and Conditions). These reports will include a brief comparison of actual accomplishments to the goals established for the period (based on the data collected under Section V.1.D.), a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required by the data analyses. A final report must be submitted within 90 days of expiration of the period of performance.

B. Financial Reports

Federal Financial Reports are due 30 days after the end of each budget period, and a final report is due 90 days after the end of the period of performance.

Awardees are responsible and accountable for reporting accurate information on all required reports: the Progress Reports and the Federal Financial Report.

C. Data Collection and Reporting

All awardees will be required to collect and report data pertaining to activities, processes, and outcomes. The IHS will identify a Tribal Epidemiology Center that will provide additional guidance on data collection and reporting for evaluation purposes. Programmatic reporting must be submitted within 30 days after the budget period ends for each project year (specific dates will be listed in the NoA Terms and Conditions). Reporting items that are not evaluation related will be submitted via GrantSolutions. Technical assistance for web-based data entry will be timely and readily available to awardees by assigned DBH staff. Awardees are responsible and accountable for accurate information being submitted by required due dates for Data Collection and Reporting.

D. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

The IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs, and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation threshold met for any specific reporting period. For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Management website at *https://www.ihs.gov/dgm/policytopics/.*

E. Non-Discrimination Legal Requirements for Awardees of Federal Financial Assistance

Should you successfully compete for an award, recipients of Federal financial assistance (FFA) from HHS must administer their programs in compliance with Federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age and, in some circumstances, religion, conscience, and sex (including gender identity, sexual orientation, and pregnancy). This includes ensuring programs are accessible to persons with limited English proficiency and persons with disabilities. The HHS Office for Civil Rights provides guidance on complying with civil rights laws enforced by HHS. Please see *https://www.hhs.gov/civil-rights/for-providers/provider-obligations/index.html* and *https://www.hhs.gov/civil-rights/for-individuals/nondiscrimination/index.html.*

- Recipients of FFA must ensure that their programs are accessible to persons with limited English proficiency. For guidance on meeting your legal obligation to take reasonable steps to ensure meaningful access to your programs or activities by limited English proficiency individuals, see *https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/fact-sheet-guidance/index.html* and *https://www.lep.gov.*
- For information on your specific legal obligations for serving qualified individuals with disabilities, including reasonable modifications and making services accessible to them, see *https://www.hhs.gov/civil-rights/for-individuals/disability/index.html.*

• HHS funded health and education programs must be administered in an environment free of sexual harassment. See *https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/index.html.*

• For guidance on administering your program in compliance with applicable Federal religious nondiscrimination laws and applicable Federal conscience protection and associated anti-discrimination laws, see *https://www.hhs.gov/conscience/conscience-protections/index.html* and *https://www.hhs.gov/conscience/religious-freedom/index.html.*

F. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the FAPIIS at *https://www.fapiis.gov/fapiis/#/home* before making any award in excess of the simplified acquisition threshold (currently $250,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. The IHS will consider any comments by the applicant, in addition to other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants, as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, NFEs are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10,000,000 for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, the IHS must require an NFE or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

All applicants and awardees must disclose in writing, in a timely manner, to the IHS and to the HHS Office of Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113. Disclosures must be sent in writing to:

U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Marsha Brookins, Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, (Include ''Mandatory Grant Disclosures'' in subject line), Office: (301) 443–4750, Fax: (301) 594–0899, Email: *DGM@ihs.gov*.

AND

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201, URL: *https://oig.hhs.gov/fraud/report-fraud/*, (Include ''Mandatory Grant Disclosures'' in subject line), Fax: (202) 205–0604 (Include ''Mandatory Grant Disclosures'' in subject line) or Email: *MandatoryGranteeDisclosures@oig.hhs.gov*.

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (see 2 CFR part 180 and 2 CFR part 376).

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: JB Kinlacheeny, Public Health Advisor, Indian Health Service, Division of Behavioral Health, 5600 Fishers Lane, Mail Stop: 0834NB, Rockville, MD 20857, Phone: (301) 443–0104, Email: *JB.Kinlacheeny@ihs.gov*.

2. Questions on grants management and fiscal matters may be directed to: Sheila Miller, Grants Management Specialist, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (240) 535–9308, Fax: (301) 594–0899, Email: *Sheila.Miller@ihs.gov*.

3. Questions on systems matters may be directed to: Paul Gettys, Deputy Director, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2114, Email: *Paul.Gettys@ihs.gov*.

VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement, and contract awardees to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Elizabeth A. Fowler,

Acting Director, Indian Health Service.

[FR Doc. 2022–15520 Filed 7–20–22; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; National Institutes of Health Workplace Civility and Equity Survey (Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

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: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Sara Mills, Program Manager, Workforce Planning and Analytics Section, 45 Center Drive, Suite 1AF08, Rockville, Maryland, 20892 or call non-toll-free number (301) 496–6744 or Email your request, including your address to: *NIHWorkplaceCES@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was

previously published in the **Federal Register** on April 27, 2022, page 25030 (87 FR 25030) and allowed 60 days for public comment. Public comment was received. The purpose of this notice is to allow an additional 30 days for public comment. The Office of the Director (OD), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: NIH Workplace Civility and Equity Survey, 0925–New—expiration date XX/XX/XXXX, Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose of this survey is to assess the workplace climate and evaluate the prevalence of harassment and discrimination at the National Institutes of Health (NIH). Specifically, the results of this survey will facilitate a data driven analysis of the types of harassment and/or discrimination that may be occurring or is perceived to be occurring, by its workers. To this end, where applicable, NIH will leverage these findings to identify areas within NIH that require further investigation, thereby providing opportunities for targeted prevention or mitigation strategies.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 7,879.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
NIH Staff	31,517	1	15/60	7,879
Total		31,517		7,879

Dated: July 13, 2022.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2022–15608 Filed 7–20–22; 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; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, July 12, 2022, 3:00 p.m. to July 12, 2022, 5:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on June 28, 2022, FR Doc. 2022–13778, 87 FR 38416.

This notice is being amended to change the date and time of this meeting from July 12, 2022, 3:00 p.m.–5:00 p.m. to July 27, 2022, 1:00 p.m.–3:00 p.m. The meeting is closed to the public.

Dated: July 15, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–15634 Filed 7–20–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2022–0094; FXES11140400000–212–FF04EF4000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink, Lake County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Troon Creek 2, LLC (Troon Creek Preserve) (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink incidental to the construction of a residential development in Lake County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that this HCP qualifies as ''low effect,'' categorically excluded under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before August 22, 2022.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2022–0094 at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2022–0094.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2022–0094; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, by U.S. mail (see **ADDRESSES**), or via phone at 904–731–3121. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Troon Creek 2, LLC (Troon Creek Preserve) (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally

listed sand skink (*Neoseps reynoldsi*) incidental to the construction of a residential development (project) in Lake County, Florida. We request public comment on the application, which includes the applicant's HCP, and on the Service's preliminary determination that this HCP qualifies as ''low effect,'' categorically excluded under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Project

The applicant requests a 5-year ITP to take sand skinks through the conversion of approximately 1.7 acres (ac) of occupied sand skink foraging and sheltering habitat incidental to the construction of a residential development located on a 34.0-ac parcel in Sections 2, 3, and 11, Township 19 South, Range 25 East, Lake County, Florida, identified by Parcel ID number 02–19–25–0003–000–05100. The applicant proposes to mitigate for take of the sand skinks by the purchase of 3.4 credits from Lake Wales Ridge Conservation Bank or another Service-approved conservation bank. The Service would require the applicant to purchase the credits prior to engaging in activities associated with the project on the parcel.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project—including land clearing, infrastructure building, residence construction, landscaping, construction, other ground disturbance and site preparation activities and the proposed mitigation measures—would individually and cumulatively have a minor or negligible effect on the sand skink and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and that the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonable foreseeable similarly situated projects, would not result in significant cumulative effects to environmental values or resources over time.

Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER0028774 to Troon Creek 2, LLC.

Authority

The Service provides this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46.305).

Robert L. Carey,

Division Manager, Environmental Review, Florida Ecological Services Office.

[FR Doc. 2022–15580 Filed 7–20–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX.22.GG00.99600.00; OMB Control Number 1028–0051]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Earthquake Hazards Program Research and Monitoring

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the U.S. Geological Survey (USGS) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 22, 2022.

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. You may also submit written comments by mail to the U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov*. Please reference OMB Control Number 1028–0051 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), contact Jill Franks by email at *jfranks@usgs.gov* or by telephone at 703–648–6716. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on March 31, 2022 (FR Vol. 87, No. 62, 18810). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might 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 personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: Research and monitoring findings are essential to fulfilling the USGS's responsibility under the Earthquake Hazards Reduction Act to develop earthquake hazard assessments and to record earthquake activity nationwide. Residents, emergency responders, engineers, and the general public rely on the USGS for this accurate and scientifically sound information. The USGS Earthquake Hazards Program funds external investigators to carry out these important activities. In response to our Program Announcements, investigators submit proposals for research and monitoring activities on earthquake hazard assessments, earthquake causes and effects, and earthquake monitoring. This information is used as the basis for selection and award of projects meeting the USGS Earthquake Hazards Program's objectives. Final Reports of research and monitoring findings are required for each funded proposal; annual progress reports are required for awards of a two- to five-year duration. Final Reports are made available to the general public at the website: *https://www.usgs.gov/programs/earthquake-hazards/science/external-grants-overview.*

Title of Collection: Earthquake Hazards Program Research and Monitoring.

OMB Control Number: 1028–0051.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Research scientists, engineers, and the general public.

Total Estimated Number of Annual Respondents: 370 (250 applications and narratives and 120 annual and final reports).

Total Estimated Number of Annual Responses: 370 (250 applications and narratives and 120 annual and final reports).

Estimated Completion Time per Response: 45 hours per proposal application response and 12 hours per final or annual progress report.

Total Estimated Number of Annual Burden Hours: 12,690 (11,250 hours for all respondent applications and narratives and 1,440 hours for all final or annual progress reports).

Respondent's Obligation: Participation is voluntary, but necessary to receive benefits.

Frequency of Collection: Annually and once every three to five years, depending on the duration of the award.

Total Estimated Annual Nonhour Burden Cost: There are no non-hour cost burdens associated with this Information Collection.

An agency may not conduct or sponsor, nor is a person 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.*).

Jill Franks,

Associate Program Coordinator, USGS Earthquake Hazards External Research.

[FR Doc. 2022–15564 Filed 7–20–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034234; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Coe College, Cedar Rapids, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Coe College, with the assistance of the Office of the State Archaeologist Bioarchaeology Program (previously listed as the Office of the State Archaeologist Burials Program), has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Coe College through the Office of the State Archaeologist Bioarchaeology Program. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Coe College through the Office of the State Archaeologist Bioarchaeology Program at the address in this notice by August 22, 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 S Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Coe College, Cedar Rapids, IA. The human remains were removed from Joe Daviess County, IL and Delaware County, IN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made on behalf of Coe College by the Office of the State Archaeologist Bioarchaeology Program professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware

Tribe of Indians; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lower Sioux Indian Community in the State of Minnesota; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Oglala Sioux Tribe (*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota); Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band Potawatomi Nation (*previously* listed as Prairie Band of Potawatomi Nation, Kansas); Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; The Osage Nation (*previously* listed as Osage Tribe); Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota (hereafter referred to as ''The Tribes'').

History and Description of the Remains

In 1890 and 1891, human remains representing, at minimum, four individuals were removed from a mound in Jo Daviess County, IL. Based on the location description, it appears the mound was one of the Crooked Slough Mounds (11JD341). The human remains were excavated by a group of students from Coe College, who donated the skeletal material to the Coe College Museum, also known as the Bert Bailey Museum. In 2012, the human remains were loaned to the Office of the State Archaeologist so that the Bioarchaeology Program could assist Coe College with NAGPRA compliance. The human remains consist of three adults of unknown age and sex, and one juvenile 1–3 years old of unknown sex (Burial Project 1934). No known individuals were identified. No associated funerary objects are present.

The overall condition of all of the human remains, supported by the limited provenience information available, suggests a date in antiquity. The cranial metrics and severe dental attrition observed on some individuals are both consistent with characteristics of prehistoric Native Americans. However, these human remains cannot be dated or attributed to a particular archeological context in Illinois.

At an unknown date, human remains representing, at minimum, three individuals were removed from a mound at an unknown location in Delaware County, IN. The circumstances of the removal are unknown, but the human remains (Accession #2106) were stored in the collections of the Coe College Museum, also known as the Bert Bailey Museum, in Cedar Rapids, IA. The style of the accession tag is identical to those used for late 19th century donations to the museum. In 2012, the human remains were loaned to the Office of the State Archaeologist so that the Bioarchaeology Program could assist Coe College with NAGPRA compliance. An older, possibly male adult and two adolescents or young adults are represented by the human remains (Burial Project 1934). No known individuals were identified. No associated funerary objects are present.

Determinations Made by Coe College

Officials of Coe College, with the concurrence of the Office of the State Archaeologist Bioarchaeology Program, have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archival information, archeological evidence, and/or osteological analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of seven individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of The Tribes.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 S Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu,* by August 22, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

Coe College, with the assistance of the Office of the State Archaeologist Bioarchaeology Program, is responsible for notifying The Tribes that this notice has been published.

Dated: July 13, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–15549 Filed 7–20–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034236; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of California, Berkeley, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of objects of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the University of California, Berkeley. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes,

or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the University of California, Berkeley at the address in this notice by August 22, 2022.

FOR FURTHER INFORMATION CONTACT: Thomas Torma, University of California, Berkeley; 50 University Hall, 2199 Addison Street, Berkeley, CA 94720, telephone (510) 672–5388, email *t.torma@berkeley.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the University of California, Berkeley, Berkeley, CA, that meet the definition of objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

Beginning in 1872, 34 cultural items were removed from multiple identified sites in Marin County, CA, including CA–Mrn–100, CA–Mrn–102, CA–Mrn–104, CA–Mrn–11, CA–Mrn–111, CA–Mrn–114, CA–Mrn–115, CA–Mrn–117, CA–Mrn–138, CA–Mrn–140, CA–Mrn–141, CA–Mrn–142, CA–Mrn–144, CA–Mrn–160, CA–Mrn–162, CA–Mrn–170, CA–Mrn–173, CA–Mrn–202, CA–Mrn–207, CA–Mrn–210, CA–Mrn–226, CA–Mrn–230, CA–Mrn–235, CA–Mrn–237, CA–Mrn–238, CA–Mrn–239, CA–Mrn–254, CA–Mrn–260, CA–Mrn–269, CA–Mrn–273, CA–Mrn–274, CA–Mrn–277, CA–Mrn–278, CA–Mrn–283, CA–Mrn–287, CA–Mrn–289, CA–Mrn–290, CA–Mrn–303, CA–Mrn–340, CA–Mrn–344, CA–Mrn–346, CA–Mrn–354, CA–Mrn–355, CA–Mrn–365, CA–Mrn–366, CA–Mrn–368, CA–Mrn–397, CA–Mrn–59, CA–Mrn–8, CA–Mrn–91, as well as 24 unidentified sites in Marin County. These collections comprise 71 separate accessions.

The 34 objects one lot of awls and awl fragments; one lot of baked clay and ceramics; one lot of basketry fragments; one lot of beads; one lot of bottles and bottle fragments; one lot of bow; one lot of charmstones and charmstone fragments; one lot of crystal; one lot of currency; one lot of faunal remains; one lot of figurines and figurine fragments; one lot of flake, beads, and sinker; one lot of glass fragments; one lot of metal tools, objects, and fragments; one lot of mixed faunal bones and plant matter; one lot of modern refuse; one lot of mortars and pestles; one lot of non-native; one lot of ornaments; one lot of pendant; one lot of pendants; one lot of pipes and pipe fragments; one lot of plant material; one lot of plant material and charcoal; one lot of plant matter; one lot of quartz; one lot of shells; one lot of sinkers; one lot of soil sample; one lot of stone; one lot of textiles and clothing; one lot of wood fragments (some charred); one lot of worked bone; and one lot of worked stone, stone tools and objects.

Based on geographical, kinship, archeological, linguistic, folkloric, oral traditional, and historical information since time immemorial the whole of Marin County has been the ancestral territory of the Coast Miwok, among whom are the Federated Indians of Graton Rancheria, California. Tribal consultation has established that the items listed in this notice are culturally affiliated with the Federated Indians of Graton Rancheria, California and are objects of cultural patrimony.

Determinations Made by the University of California, Berkeley

Officials of the University of California, Berkeley have determined that:

- Pursuant to 25 U.S.C. 3001(3)(D), the 34 cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the objects of cultural patrimony and the Federated Indians of Graton Rancheria, California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Thomas Torma, University of California, Berkeley; 50 University Hall, 2199 Addison Street, Berkeley, CA 94720, telephone (510) 672–5388, email *t.torma@berkeley.edu,* by August 22, 2022. After that date, if no additional claimants have come forward, transfer of control of the objects of cultural patrimony to the Federated Indians of Graton Rancheria, California may proceed.

The University of California, Berkeley is responsible for notifying the Federated Indians of Graton Rancheria, California, and the Guidiville Rancheria of California that this notice has been published.

Dated: July 13, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–15551 Filed 7–20–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034237; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of California, Berkeley has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the University of California, Berkeley. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the University of California, Berkeley at the address in this notice by August 22, 2022.

FOR FURTHER INFORMATION CONTACT: Thomas Torma, University of California, Berkeley; 50 University Hall, 2199 Addison Street, Berkeley, CA 94720, telephone (510) 672–5388, email *t.torma@berkeley.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of California, Berkeley; Berkeley, CA. The human remains and associated funerary objects were removed from Marin County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of California, Berkeley professional staff in consultation with representatives of the Federated Indians of Graton Rancheria, California, and the Guidiville Rancheria of California.

History and Description of the Remains

Beginning in 1868, human remains representing, at minimum, 497 individuals were removed from multiple identified sites in Marin County, CA, including CA–Mrn–10, CA–Mrn–123, CA–Mrn–139, CA–Mrn–163, CA–Mrn–164, CA–Mrn–165, CA–Mrn–168, CA–Mrn–17, CA–Mrn–201, CA–Mrn–209, CA–Mrn–232, CA–Mrn–242, CA–Mrn–26, CA–Mrn–266, CA–Mrn–271, CA–Mrn–275, CA–Mrn–280, CA–Mrn–3, CA–Mrn–301, CA–Mrn–302, CA–Mrn–307, CA–Mrn–315, CA–Mrn–34, CA–Mrn–342, CA–Mrn–345, CA–Mrn–35, CA–Mrn–353, CA–Mrn–39, CA–Mrn–65, CA–Mrn–7, CA–Mrn–76, CA–Mrn–92, as well as 14 unidentified sites in Marin County. These collections comprise 72 separate accessions.

No known individuals were identified. The 49 associated funerary objects are one lot of awls and awl fragments, one lot of baked clay and clay objects, one lot of beads and bead fragments, one lot of beads and bone, one lot of bottles and bottle fragments, one lot of buttons, one lot of ceramics and fragments, one lot of chamstone and charmstone fragments, one lot of charred faunal remains, one lot of crockery fragments, one lot of crystal, one lot of currency, one lot of faunal remains, one lot of faunal remains and artifacts, one lot of figurine, one lot of fishing tools, one lot of glass objects and fragments, one lot of grindstones, one lot of handles, one lot of head scratchers, one lot of implements, one lot of iron fragments, one lot of metal tools and objects, one lot of midden sample, one lot of mixed faunal remains, one lot of mixed faunal, shell, and plant matter, one lot of mortars and pestles, one lot of ornament, one lot of paint, one lot of pencil, one lot of pendants, amulets, and bangles, one lot of picks, one lot of pipes and pipe fragments, one lot of plant matter, one lot of plant matter and soil samples, one lot of refuse, one lot of refuse samples, one lot of scrapers and scraper fragments, one lot of shell and shell fragments, one lot of soil samples, one lot of stones, one lot of textiles, one lot of tubes and tube fragments, one lot of unknown objects, one lot of whistles and whistle fragments, one lot of wood, one lot of worked bones, bone tools and objects, one lot of worked shell objects, and one lot of worked stone and stone tools/objects.

Since time immemorial, Marin County, CA, has been the ancestral territory of the Coast Miwok, among whom are the Federated Indians of Graton Rancheria. Based on geographical, kinship, archeological, linguistic, folkloric, oral traditional, and historical information, the Federated Indians of Graton Rancheria, California are culturally affiliated with the human remains and associated funerary objects listed in this notice.

Determinations Made by the University of California, Berkeley

Officials of the University of California, Berkeley have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 497 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 49 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.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Federated Indians of Graton Rancheria, California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Thomas Torma, University of California, Berkeley; 50 University Hall, 2199 Addison Street, Berkeley, CA 94720, telephone (510) 672–5388, email *t.torma@berkeley.edu,* by August 22, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Federated Indians of Graton Rancheria, California may proceed.

The University of California, Berkeley is responsible for notifying the Federated Indians of Graton Rancheria, California, and the Guidiville Rancheria of California that this notice has been published.

Dated: July 13, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–15552 Filed 7–20–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034235; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Mattatuck Museum, Waterbury, CT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Mattatuck Museum, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of a sacred object. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the Mattatuck Museum. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit

a written request with information in support of the claim to the Mattatuck Museum at the address in this notice by August 22, 2022.

FOR FURTHER INFORMATION CONTACT: Cecelia Feldman, Mattatuck Museum, 144 West Main Street, Waterbury, CT 06702, telephone (203) 753–0381 Ext. 115, email *keffie@mattmuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the Mattatuck Museum, Waterbury, CT, that meets the definition of a sacred object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural item. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

This object is a thirteen-inch-long rattle made from a snapping turtle shell with a wooden handle attached to the base. Red and green string is wrapped around the handle, which obscures the head of the snapping turtle. Red paint has been applied to the underside of the turtle shell. Text on the underside states: ''SENECAS TURKEY FORD OKLA. MARY LOGAN 67.29.5.'' The accession number of this object indicates it came to the museum in 1967. The text written on the object indicates an origin in Turkey Ford, Oklahoma, a town associated with the Seneca-Cayuga Nation. Mary Logan is a well-documented ceremonial leader from this community. Beyond the text associated with this object, the Mattatuck Museum holds no additional records concerning the provenance of the object.

Determinations Made by the Mattatuck Museum

Officials of the Mattatuck Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the one cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred object and the Seneca-Cayuga Nation (*previously* listed as Seneca-Cayuga Tribe of Oklahoma).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to Cecelia Feldman, Mattatuck Museum, 144 West Main Street, Waterbury, CT 06702, telephone (203) 753–0381 Ext. 115, email *keffie@mattmuseum.org,* by August 22, 2022. After that date, if no additional claimants have come forward, transfer of control of the sacred object to the Seneca-Cayuga Nation (*previously* listed as Seneca-Cayuga Tribe of Oklahoma) may proceed.

The Mattatuck Museum is responsible for notifying the Seneca-Cayuga Nation (*previously* listed as Seneca-Cayuga Tribe of Oklahoma) that this notice has been published.

Dated: July 13, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–15550 Filed 7–20–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034232; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: City of Saugatuck, Saugatuck, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The City of Saugatuck, MI, has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the City of Saugatuck, MI. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the City of Saugatuck, MI, at the address in this notice by August 22, 2022.

FOR FURTHER INFORMATION CONTACT: Ryan Heise, City Manager, Saugatuck City Hall, 102 Butler Street, P.O. Box 86, Saugatuck, MI 49453, telephone (269) 857–2603, email *Ryan@saugatuckcity.com.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the City of Saugatuck, Saugatuck, MI. The human remains were removed from the Saugatuck site (20AE1) in Allegan County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by City of Saugatuck, MI, professional staff in consultation with representatives of the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (*previously* listed as Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and the Prairie Band Potawatomi Nation (*previously* listed as Prairie Band of Potawatomi Nation, Kansas) (hereafter referred to as ''The Tribes'').

History and Description of the Remains

On an unknown date after 1929, human remains representing, at minimum, three individuals were removed from the Saugatuck site (20AE1) in Allegan County, MI. Workers encountered the burials while

constructing the foundation for Saugatuck City Hall. Sometime prior to 1964, the human remains were transferred to the University of Michigan Museum of Anthropological Archaeology (UMMAA) to be reposited. In 1935, George Quimby, an undergraduate student of Archeology studying at UMMAA, recorded in an unpublished report that several post-contact period objects were found in association with the burials. The objects were never transferred to the UMMAA and their current whereabouts are unknown. The human remains are of one child, 2–4 years old, indeterminate sex; one child, approximately 5 years old, indeterminate sex; and one adolescent, under 16 years old, indeterminate sex. No known individuals were identified. No associated funerary objects are present.

The human remains have been determined to be Native American based on dental traits, burial treatment, and diagnostic artifacts. A relationship of shared group identity can be reasonably traced between the Native American human remains from this site and the Potawatomi and Ottawa based on multiple lines of evidence. The associated funerary objects noted from the site were typical of the types of goods traded in the region in A.D. 1700–1800. Quimby suggested that, based on a gorget with the American eagle emblem noted at the site, the burials slightly postdate the British monopoly on trade that lasted from 1780 to 1815. Additionally, records of the Saugatuck Historical Society and the UMMAA note that the Potawatomi and Ottawa were the predominant Indian Tribes in the area at the time these three individuals were buried, and that they used the area of the Saugatuck site as a cemetery until the 1860s.

Determinations Made by the City of Saugatuck, MI

Officials of the City of Saugatuck, MI, have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Ryan Heise, City Manager, Saugatuck City Hall, 102 Butler Street, P.O. Box 86, Saugatuck, MI 49453, telephone (269) 857–2603, email *Ryan@saugatuckcity.com,* by August 22, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The City of Saugatuck, MI, is responsible for notifying The Tribes that this notice has been published.

Dated: July 13, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–15547 Filed 7–20–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034233; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Office of the State Archaeologist, University of Iowa, Iowa City, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Office of the State Archaeologist Bioarchaeology Program, previously listed as the Office of the State Archaeologist Burials Program, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Office of the State Archaeologist Bioarchaeology Program. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Office of the State Archaeologist Bioarchaeology Program at the address in this notice by August 22, 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 S Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Office of the State Archaeologist, University of Iowa, Iowa City, IA. The human remains and associated funerary objects were removed from several unknown locations in Illinois, as well as Joe Daviess, Hancock, and Fulton Counties, IL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Office of the State Archaeologist Bioarchaeology Program professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior

Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lower Sioux Indian Community in the State of Minnesota; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Oglala Sioux Tribe (*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota); Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band Potawatomi Nation (*previously* listed as Prairie Band of Potawatomi Nation, Kansas); Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; The Osage Nation (*previously* listed as Osage Tribe); Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota (hereafter referred to as ''The Tribes'').

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed from an unknown location in IL. A private individual purchased the human remains at a flea market in Maquoketa, IA, and reasonably believed that the human remains were originally found in Illinois. In 1999, this individual transferred the human remains to the Office of the State Archaeologist Bioarchaeology Program (OSA–BP). The human remains, represented by the lumbar vertebra, belong to an older juvenile or adult less than 25 years old and of unknown sex. A metal projectile point embedded into the bone appears to have been inserted in the recent past and does not reflect actual lifetime trauma (Burial Project 1339). No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, five individuals were removed from an unknown site reasonably believed to be in Illinois. At some point, the human remains became part of the teaching collection of John Hansen, a professor at St. Ambrose University in Davenport, IA. In 1995, following the retirement of Dr. Hansen, the human remains were transferred to the Office of the State Archaeologist Bioarchaeology Program. The human remains belong to two middle-aged-to-old adult males; one adult of unknown age and sex; and two juveniles (one aged 7.5 to 12.5 years old and one of unknown age) of unknown sex (Burial Project 3078). No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, one individual were removed from an unknown location in Jo Daviess County, IL. The human remains were part of the collections of Richard Herrmann, a private individual. At an unknown date, Mr. Herrmann donated the human remains to the Ham House Museum in Dubuque, IA (catalog #64–14–145). In 1986, the human remains were transferred to the Office of the State Archaeologist Bioarchaeology Program. The human remains, represented by the cranium and mandible, belong to an adult male between 24 and 45 years old. Cranial metrics and dental wear suggest this individual was Native American (Burial Project 655). No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, two individuals were removed from an unknown location in Illinois. The human remains were part of the collections of Richard Herrmann, a private individual. At an unknown date, Mr. Herrmann donated the human remains to the Ham House Museum in Dubuque, IA (catalog #64–14–61). In 1986, the human remains were transferred to the Office of the State Archaeologist Bioarchaeology Program. The human remains belong to two adults of unknown age. One is possibly male and the other is possibly female (Burial Project 655). No known individuals were identified. No associated funerary objects are present.

On August 7, 1966, human remains representing, at minimum, 10 individuals were removed from an unidentified mound near the Mississippi River in Illinois. The human remains were excavated by a private collector and transferred to the Office of the State Archaeologist after the collector's death in 1994. The human remains belong to four adults of indeterminate age and sex, a juvenile 6 months–1.5 years old, two juveniles 1.5–3.0 years old, a juvenile 4–5 years old, a juvenile 7–12 years old, and a juvenile 13–18-years-old (Burial Project 785). No known individuals were identified. The 23 associated funerary objects are one fragment of a chert biface, one chert flake, one Middle Woodland axe, one flake of hematite, one small shell with a drilled end, one unmodified freshwater clam shell, nine faunal bone fragments, one grass seed, and seven small pieces of unmodified limestone.

At an unknown date, human remains representing, at minimum, three individuals were removed from an unidentified mound in Illinois. The human remains were excavated by a private collector and were transferred to the Office of the State Archaeologist after the collector's death in 1994. The human remains belong to a probable male adult, an adolescent, and an infant (Burial Project 785). No known individuals were identified. The four associated funerary objects are four small slabs of limestone.

On September 8, 1958, human remains representing, at minimum, five individuals were removed from an unidentified mound near the Mississippi River in Illinois. The human remains were excavated by a private collector and transferred to the Office of the State Archaeologist after the collector's death in 1994. The human remains belong to two adults of unknown age and sex, a juvenile approximately 2.5–5 years old, a juvenile 5–6.5 years old, and a juvenile 6.5–14 years old (Burial Project 785). No known individuals were identified. No associated funerary objects are present.

On October 16, 1983, human remains representing, at minimum, two individuals were removed from one double burial or two individual burials situated on the bank of the Mississippi River in Hancock County, IL. The site may have been located in the vicinity of site 11HA45. The human remains were excavated by a private collector and transferred to the Office of the State Archaeologist after the collector's death in 1994. The human remains belong to an old adult of indeterminate sex and a child 2.5–3.5 years old (Burial Project 785). No known individuals were identified. The 25 associated funerary objects are one pot sherd, six unmodified river pebbles, six bifacial chert cores, one chert gouge, one chert adze, one chert biface, one bifacial chert cutting tool, six projectile points, and two pieces of natural limestone.

On August 10, 1964, human remains representing, at minimum, four individuals were removed from a mound located on a property described as ''the Taswell land'' in Illinois. The

human remains were excavated by a private collector and transferred to the Office of the State Archaeologist after the collector's death in 1994. The human remains belong to a juvenile 2.5–4 years old, a juvenile 3.5–4.5 years old, a juvenile 5–6.5 years old, and an older juvenile of unknown age (Burial Project 785). No known individuals were identified. No associated funerary objects are present.

On August 18, 1964, human remains representing, at minimum, four individuals were removed from an unidentified mound in Illinois. The human remains were excavated by a private collector and transferred to the Office of the State Archaeologist after the collector's death in 1994. The human remains belong to two adults of indeterminate age and sex, an adolescent, and an infant approximately 9 months–1 year old (Burial Project 785). No known individuals were identified. The 14 associated funerary objects are 13 Late Woodland ceramic sherds and one faunal bone.

At an unknown date, human remains representing, at minimum, three individuals were removed from an unidentified mound in Illinois. The human remains were excavated by a private collector and transferred to the Office of the State Archaeologist after the collector's death in 1994. The human remains belong to two adults and one juvenile of indeterminate age and sex (Burial Project 785). No known individuals were identified. The 15 associated funerary objects are 10 small slabs of limestone, one limestone concretion, two pieces of chert debitage, one freshwater clam shell, and one incomplete skull of a groundhog (*Marmota monax*).

At an unknown date, human remains representing, at minimum, two individuals were removed from an unidentified mound in Illinois. The human remains were excavated by a private collector and transferred to the Office of the State Archaeologist after the collector's death in 1994. The human remains belong to an adult male and an adult female (Burial Project 785). No known individuals were identified. No associated funerary objects are present.

On June 7, 1965, human remains representing, at minimum, one individual were removed from a mound in the vicinity of Nauvoo, Hancock County, IL. The human remains were excavated by a private collector and transferred to the Office of the State Archaeologist after the collector's death in 1994. The human remains belong to an adult of unknown age and sex (Burial Project 785). No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, one individual were removed from an unidentified mound in Illinois. The human remains were excavated by a private collector and transferred to the Office of the State Archaeologist after the collector's death in 1994. The human remains belong to an adult of unknown age and sex (Burial Project 785). No known individual was identified. The four associated funerary objects are one piece of chert debitage, one ceramic sherd, one piece of charcoal, and one charred nutshell.

On August 14, 1964, human remains representing, at minimum, one individual were removed from a mound located on a property described as the ''Taswell land'' in Illinois. The human remains were excavated by a private collector and transferred to the Office of the State Archaeologist after the collector's death in 1994. The human remains belong to an adult of unknown age and sex (Burial Project 785). No known individual was identified. The two associated funerary objects are two ceramic sherds.

Sometime in the 1960s, human remains representing, at minimum, nine individuals were removed from unidentified burial mounds in Illinois. These human remains were excavated by a private collector living in Fort Madison, Iowa. After the collector's death in 1994, the human remains were offered for bid by an auction service in Marion County, Iowa. The auctioneer was contacted, and the human remains were transferred to the Office of the State Archaeologist Bioarchaeology Program in 1994. The human remains belong to two adult males, an adult female, an individual of indeterminate age and sex, and five juveniles ranging in age from 12 months to 9 years (Burial Project 743). No known individuals were identified. No associated funerary objects are present.

The condition of the above listed human remains and the limited provenience information associated with them suggest a date in antiquity. Furthermore, the cranial metrics and severe dental attrition observed on some individuals are both consistent with characteristics of prehistoric Native Americans. That said, these human remains cannot be dated or attributed to a particular archeological context in Illinois.

Determinations Made by the Office of the State Archaeologist Bioarchaeology Program

Officials of the Office of the State Archaeologist Bioarchaeology Program have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archival information, archeological evidence, and/or osteological analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 54 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 87 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.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of The Tribes.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 S Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu,* by August 22, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Office of the State Archaeologist Bioarchaeology Program is responsible for notifying The Tribes that this notice has been published.

Dated: July 13, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–15548 Filed 7–20–22; 8:45 am]

BILLING CODE 4312–52–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–0346; NRC–2022–0138]

Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Davis-Besse Nuclear Power Station, Unit No. 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Renewed Facility Operating License No. NPF–3, issued on December 8, 2015, and held by Energy Harbor Nuclear Corp. (EHNC) and Energy Harbor Nuclear Generation LLC for the operation of Davis-Besse Nuclear Power Station, Unit No. 1 (Davis-Besse). The proposed amendment would revise the emergency plan for Davis-Besse by changing the emergency response organization (ERO) requirements. The NRC is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) associated with the proposed license amendment.

DATES: The EA and FONSI referenced in this document are available on July 21, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0138 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–2022–0138. 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.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The 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:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Blake A. Purnell, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1380, email: *Blake.Purnell@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated January 19, 2022 (ADAMS Accession No. ML22019A236), as supplemented by letter dated July 5, 2022 (ADAMS Accession No. ML22186A121), EHNC submitted a request to amend Renewed Facility Operating License No. NPF–3, issued to EHNC and Energy Harbor Nuclear Generation LLC, for the operation of Davis-Besse, which is located in Ottawa County, Ohio. The proposed amendment would revise the emergency plan for Davis-Besse by changing the ERO staffing requirements. The changes include eliminating ERO positions; adding ERO positions; changing position descriptions, titles, duties, and duty locations; changing response times; and relocating certain position descriptions to other parts of the emergency plan or to implementing procedures.

Each licensee for a nuclear power plant is required to establish an emergency plan to be implemented in the event of an accident in accordance with section 50.47 and appendix E of title 10 of the *Code of Federal Regulations* (10 CFR). The emergency plan covers preparation for evacuation, sheltering, and other actions to protect individuals near the plant in the event of an accident. An effective emergency preparedness program decreases the likelihood of an initiating event at a nuclear power plant proceeding to a severe accident. Emergency preparedness cannot affect the probability of the initiating event, but a high level of emergency preparedness increases the probability of accident mitigation if the initiating event proceeds beyond the need for initial operator actions.

The regulations in 10 CFR 50.54(q)(2) require licensees for nuclear power plants to follow and maintain the effectiveness of an emergency plan that meets the standards in 10 CFR 50.47(b) and the requirements in 10 CFR part 50, appendix E. Sections 50.54(q)(3) and (4) specify the process by which a licensee may make changes to its emergency plan. In accordance with 10 CFR 50.54(q)(4), EHNC submitted the January 19, 2022, license amendment request, pursuant to 10 CFR 50.90, to obtain NRC approval of the proposed changes to the Davis-Besse emergency plan prior to implementation.

The NRC staff is considering approval of the January 19, 2022, license amendment request for Davis-Besse. Therefore, as required by 10 CFR 51.21, the NRC performed an EA. Based on the results of the EA that follows, the NRC has determined not to prepare an environmental impact statement for the proposed licensing action and is issuing a FONSI.

In addition to this EA, the NRC is conducting a safety evaluation of EHNC's proposed changes to the emergency plan for Davis-Besse, which will be documented separately. The safety evaluation of the proposed changes to the emergency plan will determine whether there continues to be reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Davis-Besse, in accordance with the standards of 10 CFR 50.47(b) and the requirements in 10 CFR part 50, appendix E.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would revise the ERO requirements identified in the emergency plan for Davis-Besse, including the on-shift, minimum, and full-augmentation ERO staffing requirements. The proposed revisions include eliminating ERO positions; adding ERO positions; changing position descriptions, titles, duties, and duty locations; changing response times, and relocating certain position descriptions to other parts of the emergency plan or to implementing procedures. Overall, staffing levels are not expected to increase.

The proposed action is in accordance with EHNC's application dated January 19, 2022.

Need for the Proposed Action

The proposed action would align the emergency plan for Davis-Besse with the NRC's alternative guidance for EROs provided in a June 12, 2018, letter to the Nuclear Energy Institute (ADAMS Accession No. ML18022A352). This

alternative guidance is also included in NUREG–0654/FEMA–REP–1, Revision 2, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,'' dated December 2019 (ADAMS Accession No. ML19347D139). This change would provide EHNC with greater flexibility in staffing ERO positions. The application states that EHNC discussed the proposed changes to the emergency plan with the offsite response organizations for the State of Ohio, Ottawa County, and Lucas County, and that these organizations had no concerns.

Environmental Impacts of the Proposed Action

The proposed action consists of changes related to staffing positions, position descriptions, titles, duties, duty locations, and response times specified in the emergency plan for Davis-Besse. The on-shift, minimum, and full-augmentation ERO staffing requirements listed in the emergency plan would be revised. The proposed revisions include eliminating ERO positions; adding ERO positions; changing position descriptions, titles, duties, and duty locations; changing response times, and relocating certain position descriptions to other parts of the emergency plan or to implementing procedures.

The proposed changes would have no impact on nonradiological resources, such as land use or water resources, including terrestrial and aquatic biota, as they involve no new construction, ground disturbing activities, or modification of plant operational systems. There would be no changes to the quality or quantity of nonradiological effluents and no changes to the plant's National Pollutant Discharge Elimination System permit as a result of the proposed amendment. The overall staffing levels are not expected to increase; therefore, worker vehicle air emissions are not expected to increase, and established threshold emissions set forth in 40 CFR 93.153(b) for designated nonattainment or maintenance areas would not be exceeded. Since the proposed changes will not increase staffing levels and will not involve ground disturbing activities, modification of plant operation systems, or new construction, there would be no noticeable effect on socioeconomic conditions in the region, no environment justice impacts, and no impacts to historic and cultural resources from the proposed changes. Therefore, there would be no significant nonradiological environmental impacts associated with the proposed action.

With regard to potential radiological environmental impacts, the proposed action would not increase the probability or consequences of radiological accidents because the emergency plan must continue to meet the standards of 10 CFR 50.47(b) and the requirements in 10 CFR part 50, appendix E. There would be no change to the types or amounts of radioactive effluents that may be released and, therefore, no change in occupational or public radiation exposure from the proposed changes. Moreover, no changes would be made to plant buildings or the site property from the proposed changes. Therefore, there would be no significant radiological environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the license amendment request (*i.e.,* the ''no-action'' alternative). Denial of the license amendment request would result in no change to current environmental impacts. Accordingly, the environmental impacts of the proposed action and the no-action alternative would be similar.

Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

Agencies and Persons Consulted

No additional agencies or persons were consulted regarding the environmental impact of the proposed action.

III. Finding of No Significant Impact

EHNC has requested a license amendment pursuant to 10 CFR 50.90 to revise the emergency plan for Davis-Besse by eliminating ERO positions; adding ERO positions; changing position descriptions, titles, duties, and duty locations; changing response times, and relocating certain position descriptions to other parts of the emergency plan or to implementing procedures. The NRC staff is considering issuance of the requested amendment.

Consistent with 10 CFR 51.21, the NRC staff conducted an EA of the proposed action, which is provided in Section II of this notice and is incorporated by reference in this FONSI. Based on this EA, the NRC staff has concluded that the proposed action will not have a significant impact on the quality of the human environment. Accordingly, the NRC staff has determined there is no need to prepare an environmental impact statement for the proposed action.

Previous considerations regarding the environmental impacts of operating Davis-Besse, in accordance with its renewed facility operating license, are described in NUREG–1437, Supplement 52, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Davis-Besse Nuclear Power Station,'' Final Report, Volumes 1 and 2 (ADAMS Accession Nos. ML15112A098 and ML15113A187, respectively), dated April 2015.

This FONSI and other related environmental documents may be examined, and/or copied for a fee, at the NRC's PDR, located at Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Publicly available records are also accessible online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *PDR.Resource@nrc.gov.*

Dated: July 14, 2022.

For the Nuclear Regulatory Commission.

Blake A. Purnell,

Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–15566 Filed 7–20–22; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–86 and CP2022–90; MC2022–87 and CP2022–91]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 25, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by

telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2022–86 and CP2022–90; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 220 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 15, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Katalin Clendenin; *Comments Due:* July 25, 2022.

2. *Docket No(s).:* MC2022–87 and CP2022–91; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 17 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 15, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* July 25, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–15571 Filed 7–20–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–85 and CP2022–89]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 22, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2022–85 and CP2022–89; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 219 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 14, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:*

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Jennaca Upperman; *Comments Due:* July 22, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–15534 Filed 7–20–22; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–81 and MC2022–82; Order No. 6230]

Classification Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing recent Postal Service filings requesting the removal of USPS Retail Ground from the competitive product list and a set of changes for First-Class Package Service and Parcel Select. This notice informs the public of the filings, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 31, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Summary of Changes
III. Notice of Commission Action
IV. Ordering Paragraphs

I. Introduction

On July 13, 2022, pursuant to 39 U.S.C. 3642 and 39 CFR 3040.130 *et seq.,* the Postal Service filed a request to remove USPS Retail Ground from the competitive product list.[1] To support this request, the Postal Service filed a copy of the Governors' Decision supporting the request, a Statement of Supporting Justification in accordance with 39 CFR 3040.132, and proposed changes to the Mail Classification Schedule (MCS). *See* USPS Retail Ground Request, Attachments A–C.

Also on July 13, 2022, pursuant to 39 CFR 3035.104, 3040.212, and 3040.180 *et seq.,* the Postal Service filed a notice of a set of changes for First-Class Package Service and Parcel Select.[2] The Postal Service filed a copy of the supporting Governors' Decision and proposed changes to the MCS. *See* Competitive Classification Notice, Attachments A–B.

II. Summary of Changes

The Postal Service requests to remove USPS Retail Ground from the competitive product list effective January 8, 2023. *See* USPS Retail Ground Request at 1. The Postal Service also provides notice proposing to remove the Parcel Select Ground price category from Parcel Select and make enhancements to First-Class Package Service effective January 8, 2023. Competitive Classification Notice at 1. The enhancements to First-Class Package Service include: expanding the product weight limit to 70 pounds; updating size (dimension) limitations; adding $100 of insurance; adding cubic pricing tiers, along with Oversized, Dimensional Weight, and Nonstandard Fees. *See id.* at 1–2. In addition, the Postal Service will retain the Limited Overland Routes price category, but shift it under First-Class Package Service. *See id.* at 2.

The Postal Service proposes these changes ''to simplify and streamline [its] ground competitive package offerings under one product.'' USPS Retail Ground Request, Attachment A at 1; *see also* Competitive Classification Notice at 2. In the view of the Postal Service, ''retail and commercial customers will all benefit from this simplified and streamlined ground package offering, and from the overall enhanced First-Class Package Service product.'' USPS Retail Ground Request, Attachment A at 1; *see also* Competitive Classification Notice, Attachment A at 1. According to the Postal Service, ''these classification changes will have a positive impact on users of the Postal Service's ground package offerings and will have a minimal impact on competitors and the broader package market. Ground package shippers, particularly retail customers and small businesses, will benefit from a simplified and streamlined offering.'' Competitive Classification Notice at 3 (citation omitted); *see also* USPS Retail Ground Request, Attachment B at 3–4.

The Postal Service asserts that its request to remove USPS Retail Ground from the competitive product list is consistent with applicable law and regulation. *See* USPS Retail Ground Request, Attachment B at 1. The Postal Service further asserts that none of these classification changes will result in the violation of 39 U.S.C. 3633 because competitive products are still expected to cover their costs and contribute an appropriate share to institutional costs. *See id.* Attachment B at 2; Competitive Classification Notice at 2.

III. Notice of Commission Action

The Commission establishes Docket No. MC2022–81 to consider matters raised by the USPS Retail Ground Request and Docket No. MC2022–82 to consider matters raised by the Competitive Classification Notice. *See* 39 CFR 3040.133, 3040.182. The instant dockets involve related issues pertaining to product consolidation. Accordingly, the Commission will consolidate them. *See* 39 CFR 3010.104.

Pursuant to 39 CFR 3040.133, the Commission has posted the USPS Retail Ground Request on its website. Pursuant to 39 CFR 3040.182, the Commission has posted the Competitive Classification Notice on its website. The Commission invites comments on the USPS Retail Ground Request and the Competitive Classification Notice. Comments are due no later than August 31, 2022. The filings can be accessed via the Commission's website (*http://www.prc.gov*).

The Commission appoints Samuel M. Poole to represent the interests of the general public (Public Representative) in these dockets.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MC2022–81 to consider matters raised by the USPS Retail Ground Request.

2. The Commission establishes Docket No. MC2022–82 to consider matters raised by the Competitive Classification Notice.

3. The Commission consolidates Docket Nos. MC2022–81 and MC2022–82.

4. Comments by interested persons are due by August 31, 2022.

5. Pursuant to 39 U.S.C. 505, Samuel M. Poole is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

[1] Docket No. MC2022–81, USPS Request to Remove USPS Retail Ground from the Competitive Product List, July 13, 2022 (USPS Retail Ground Request).

[2] Docket No. MC2022–82, USPS Notice of Changes in Classifications of General Applicability for Competitive Products, July 13, 2022 (Competitive Classification Notice).

6. The Commission directs the Secretary of the Commission to arrange for prompt publication of this notice in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2022–15528 Filed 7–20–22; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 13, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 218 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–83, CP2022–87.

Joshua J. Hofer,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–15530 Filed 7–20–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 15, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 220 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–86, CP2022–90.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–15537 Filed 7–20–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 5, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 752 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–78, CP2022–84.

Joshua J. Hofer,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–15529 Filed 7–20–22; 8:45 am]

BILLING CODE P

POSTAL SERVICE

Product Change—Priority Mail Express Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 6, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express Contract 95 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–79, CP2022–85.

Joshua J. Hofer,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–15532 Filed 7–20–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 7, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 15 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–80, CP2022–86.

Joshua J. Hofer,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–15527 Filed 7–20–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Notice To Postpone Public Hearing and Extend Public Comment Period for Supplement to the Next Generation Delivery Vehicles Acquisitions Final Environmental Impact Statement

On June 10, 2022, the Postal Service published a Notice of Intent (NOI) to prepare a Supplemental Environmental Impact Statement (SEIS) to analyze potential environmental impacts of a proposed change to the Preferred Alternative for its Next Generation Delivery Vehicle (NGDV) Acquisitions, which was adopted in the Record of Decision (ROD) on February 23, 2022. The Final Environmental Impact Statement (FEIS) for the NGDV Acquisitions was published on January 7, 2022, pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), its implementing regulations at 39 CFR part 775, and the President's Council on Environmental Quality (CEQ) regulations at 40 CFR part 1500.

The FEIS analyzed potential environmental impacts of several alternatives that the Postal Service developed and considered for replacing end-of-life and high-maintenance delivery long-life vehicles (LLVs) and flexible fuel vehicles (FFVs) with new vehicles that have more energy-efficient powertrains, updated technology, reduced emissions, increased cargo capacity and improved loading characteristics, improved ergonomics and carrier safety, and reduced maintenance costs. Under the selected Preferred Alternative, the Postal Service would purchase and deploy 50,000 to 165,000 NGDVs, at least 10 percent of the NGDVs would have battery electric vehicle (BEV) powertrains, and the Postal Service would have the flexibility to acquire significantly more BEV NGDVs should funding become available. On March 24, 2022, in accordance with the ROD, the Postal Service placed an order for 50,000 NGDVs, of which 10,019 are BEVs.

The NOI for the SEIS announced that network refinements and route optimization efforts could impact the makeup of the Postal Service's future delivery fleet—including vehicles purchased pursuant to the NGDV Acquisition—and that the SEIS would analyze the potential environmental impacts of those potential changes. Specifically, the Postal Service announced that it would consider the impacts of proposed route changes that may warrant an increase in the minimum number of BEV NGDVs to be procured to replace LLVs and FFVs. The Postal Service included in the NOI for the SEIS a notice for a virtual public hearing to be conducted on Tuesday, July 19, 2022, at 7:00 p.m. (ET).

The Postal Service now announces our intention to postpone that virtual public hearing to the new date of Monday, August 8, 2022, at 7 p.m. (ET). Registration information is available at the following website: *http://uspsngdveis.com/*. Accordingly, the public comment period for the Notice of Intent will also be extended until August 15, 2022.

The reason for the public hearing postponement and public comment extension is to inform the public and solicit comments regarding the Postal Service's adjustment to the scope of the SEIS. As the Postal Service has determined that there is a compelling need to redesign our operating model in order to substantially reduce operating costs, significantly improve service, and enable exponential growth in our package delivery business, the SEIS scope is being adjusted to analyze potential environmental impacts from these recent changes that will affect our delivery procurement strategy and require two modifications to our Preferred Alternative for replacing LLVs and FFVs with new vehicles.

First, the Postal Service proposes to modify its Preferred Alternative to the purchase and deployment of only 50,000 NGDVs consisting of a mix of ICE and BEV powertrains with what we anticipate will be a significantly higher percentage of BEVs, and certainly not less than 50 percent. This significant increase that we anticipate in the minimum percentage of BEV NGDVs reflects the favorable cost benefit impacts expected from the changes to both our operational strategy and our acquisition planning horizon that are discussed below.

Any purchase of NGDVs above the 50,000 (or the purchase of any other purpose-built vehicles) would be subject to future supplements to the FEIS, given the likelihood of advances in technology, changes to the cost profile and market availability of current and future technology, and further improvements and refinements in the operational strategy of the Postal Service.

Second, in response to our critical need to accelerate the replacement of aged and high-maintenance LLVs and FFVs in the near term, thereby reducing the significant operational risks, adverse environmental impacts, and considerable costs associated with extending their lives, and to be more responsive to dynamic market conditions, the Postal Service proposes to procure within a two-year period: (1) up to 20,000 left-hand drive Commercial Off-the-Shelf (COTS) vehicles, including as many BEVs as are commercially available and consistent with our delivery profile; and (2) up to 14,500 right-hand drive ICE COTS vehicles. To be clear, the Postal Service anticipates that because of our critical and immediate need for delivery vehicles to fulfill our universal service mission, and the limitations on the current market availability for BEVs that can support our daily requirement to deliver to 163 million addresses six (and sometimes seven) days per week, it will be necessary for us to procure some ICE vehicles. In parallel, we will also need to make significant investment in the repair of over 50,000 aging LLVs and FFVs each year to continue extending their useful life, despite the significant operational risk, considerable maintenance costs, and the higher emissions of greenhouse gases and other air pollutants when compared to more modern vehicles. This activity will be necessary because of our universal service mission and our inability to acquire sufficient quantities of modern vehicles in the current market (irrespective of the type of drive train) to replace our delivery fleet.

If adopted, these measures would significantly modify the Postal Service's Preferred Alternative for replacing LLVs and FFVs with new vehicles. The SEIS is intended to evaluate the potential environmental impacts of the current procurement of 50,000 NGDVs and procuring the additional 34,500 COTS vehicles. It is the Postal Service's expectation that the total quantity of NGDVs and COTS vehicles to be procured in the SEIS's Preferred Alternative will be at least 40 percent BEV.

Over the next ten to fifteen years, the Postal Service intends to pursue a multiple step acquisition process in our longer term efforts to fully replace our aging delivery fleet, and in that regard anticipates evaluating and procuring smaller quantities of vehicles over shorter time periods than the ten-year period analyzed in the FEIS in order to be more responsive to our evolving operational strategy, technology improvements, and changing market conditions, including the expected increased availability of BEV options in the future. Additional vehicle procurements beyond the procurements being analyzed in this Supplement would be assessed in subsequent supplements to the FEIS, on an as-needed basis, taking advantage of the then-current market and operational conditions.

The change to our delivery procurement strategy is being made in response to substantial delivery network and route optimization improvements to the postal delivery network. As such, the SEIS will analyze the potential environmental impacts to the delivery fleet from the new Preferred Alternative, including the extent to which we expect the network improvements, changed route length and characteristics, and improved facility electric infrastructure will result in a significant increase in the minimum number of BEV NGDVs and COTS to be procured under the SEIS Preferred Alternative.

The Postal Service actively seeks input from the public, interested persons, organizations, and federal, state, and regional agencies to identify environmental concerns and potential alternatives to be addressed in the SEIS and will continue to accept public comments until August 15, 2022. With respect to recommendations regarding potential alternatives, the Postal Service requests that comments be as specific as possible regarding vehicle type, model, and manufacturer so that the Postal Service might fully consider the alternative in terms of pricing, operational capabilities, and market availability.

Comments should be received no later than August 15, 2022. The Postal Service will also publish a Notice of Availability to announce the availability of the Draft SEIS and solicit comments on the Draft SEIS during a second 45-day public comment period.

Interested parties may direct comments and questions to: Mr. Davon Collins, Environmental Counsel, United States Postal Service, 475 L'Enfant Plaza SW, Office 6606, Washington, DC 20260–6201, or at *NEPA@usps.gov.* Note that comments sent by mail may be subject to delay due to federal security screening. Faxed comments are not accepted. All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

The Postal Service will also conduct a virtual public hearing on Monday, August 8, 2022, at 7 p.m. (ET).

References

1. U.S. Postal Service, Notice of Intent to Prepare an Environmental Impact Statement for Purchase of Next Generation Delivery Vehicles, 86 FR 12715 (Mar. 4, 2021).
2. U.S. Postal Service, Notice of Availability of Draft Environmental Impact Statement for Purchase of Next Generation Delivery Vehicle, 86 FR 47662 (Aug. 26, 2021).
3. U.S. Environmental Protection Agency, Notice of Availability of EIS No. 20210129, Draft, USPS, DC, Next Generation Delivery Vehicle Acquisitions, 86 FR 49531 (Sept. 3, 2021).
4. U.S. Environmental Protection Agency, Notice of Availability of EIS No. 20220001, Final, USPS, DC, Next Generation Delivery Vehicle Acquisitions, 87 FR 964 (Jan. 7, 2022).
5. U.S. Postal Service, Notice of Availability of Final Environmental Impact Statement for Purchase of Next Generation Delivery Vehicles, 87 FR 994 (Jan. 7, 2022).
6. U.S. Postal Service, Notice of Availability of Record of Decision, 87 FR 14588 (Mar 15, 2022).
7. U.S. Postal Service, Notice of Intent to Prepare a Supplement to the Next Generation Delivery Vehicle Acquisitions Final Environmental Impact Statement, 87 FR 35581 (June 10, 2022).

Sarah E. Sullivan,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2022–15616 Filed 7–20–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 15, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 17 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–87, CP2022–91.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–15533 Filed 7–20–22; 8:45 am]

BILLING CODE P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 13, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 16 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–84, CP2022–88.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–15536 Filed 7–20–22; 8:45 am]

BILLING CODE P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 14, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 219 to Competitive Product List.* Documents are available at

www.prc.gov, Docket Nos. MC2022–85, CP2022–89.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–15535 Filed 7–20–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95299; File No. SR–MEMX–2022–17]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule Concerning Connectivity Fees

July 15, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 5, 2022, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members [3] and non-Members (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchange is re-filing its proposal to amend the Fee Schedule regarding fees the Exchange charges to Members and non-Members for physical connectivity to the Exchange and for application sessions (otherwise known as ''logical ports'') that a Member utilizes in connection with their participation on the Exchange (together with physical connectivity, collectively referred to in this proposal as ''connectivity services,'' as described in greater detail below and in Exhibit 5). The Exchange is proposing to implement the proposed fees immediately.

The Exchange filed its Initial Proposal on December 30, 2021,[4] and began charging fees for connectivity services for the first time in January of 2022. On February 28, 2022, the Commission suspended the Initial Proposal and asked for comments on several questions.[5] The Exchange then filed the Second Proposal, which was subsequently withdrawn and replaced with the Third Proposal. The Exchange has collected fees for connectivity services for six months now and is thus able to supplement its filing with additional details that were not available at the time of filing of the Initial Proposal, the Second Proposal, or the Third Proposal and is also able to respond to certain questions raised in the OIP. As set forth below, the Exchange believes that both the Initial Proposal, the Second Proposal, and the Third Proposal provided a great deal of transparency regarding the cost of providing connectivity services and anticipated revenue and that each of the prior proposals was consistent with the Act and associated guidance. The Exchange is re-filing this proposal promptly following the withdrawal of the Third Proposal with the intention of maintaining the existing fees for connectivity services while at the same time providing additional details not contained in prior proposals. The Exchange believes that this approach is appropriate and fair for competitive reasons as several other exchanges currently charge for similar services, as described below, and because others have followed a similar approach when adopting fees.[6]

As set forth in the Initial Proposal, the Second Proposal, the Third Proposal and this filing, the Exchange does incur significant costs related to the provision of connectivity services and believes it should be permitted to continue charging for such services while also providing additional time for public comment on the level of detail contained in this proposal and other questions posed in the OIP. Finally, the Exchange does not believe that the ability to charge fees for connectivity services or the level of the Exchange's proposed fees are at issue, but rather, that the level of detail required to be included by the Exchange when adopting such fees is at issue. For these reasons, the Exchange believes it is appropriate to re-file this proposal and to continue charging for connectivity services.

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1.5(p).

[4] The Exchange received one comment letter on the Initial Proposal, which asserted that the Exchange did not address the Exchange's ownership structure and that revenues from connectivity services could have a ''disparate impact'' on certain Members. *See* Letter from Tyler Gellasch, Healthy Markets Association, dated January 26, 2022. The Exchange notes that the ownership of an exchange by members is not unprecedented and that the ownership structure of the Exchange and related issues were addressed during the process of the Exchange's registration as a national securities exchange. *See* Securities Exchange Act Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020) (approval order related to the application of MEMX LLC to register as a national securities exchange). The Exchange does not believe that the Initial Proposal or this proposal raises any new issues that have not been previously addressed.

[5] *See* Securities Exchange Act Release No. 94332 (February 28, 2022) (SR–MEMX–2021–22) (Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Change to Amend the Exchange's Fee Schedule to Adopt Connectivity Fees) (the ''OIP'').

[6] *See, e.g.,* Securities Exchange Act Release No. 87875 (December 31, 2019), 85 FR 770 (January 7, 2020) (SR–MIAX–2019–51) (notice of filing and immediate effectiveness of changes to the Miami International Securities Exchange LLC, or ''MIAX'', fee schedule). The Exchange notes that the MIAX filing was the eighth filing by MIAX to adopt the fees proposed for certain connectivity services following multiple times of withdrawing and re-filing the proposal. The Exchange notes that MIAX charged the applicable fees throughout this period while working to develop a filing that met the new standards being applied to fee filings. *See also* Fee Guidance, *infra* note 13.

should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

In proposing to charge fees for connectivity services, the Exchange has sought to be especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and also carefully and transparently assessing the impact on Members—both generally and in relation to other Members, *i.e.,* to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,[7] and Rule 19b–4 thereunder,[8] with respect to the types of information self-regulatory organizations (''SROs'') should provide when filing fee changes, and Section 6(b) of the Act,[9] which requires, among other things, that exchange fees be reasonable and equitably allocated,[10] not designed to permit unfair discrimination,[11] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[12] This rule change proposal addresses those requirements, and the analysis and data in each of the sections that follow are designed to clearly and comprehensively show how they are met.[13]

Prior to January 3, 2022, MEMX did not charge fees for connectivity to the Exchange, including fees for physical connections or application sessions for order entry purposes or receipt of drop copies. The objective of this approach was to eliminate any fee-based barriers to connectivity for Members when MEMX launched as a national securities exchange in 2020, and it was successful in achieving this objective in that a significant number of Members are directly or indirectly connected to the Exchange.

As detailed below, MEMX recently calculated its aggregate monthly costs for providing physical connectivity to the Exchange at $795,789 and its aggregate monthly costs for providing application sessions at $347,936. Because MEMX offered all connectivity free of charge until January of this year, MEMX has borne 100% of all connectivity costs. In order to cover the aggregate costs of providing connectivity to its Users (both Members and non-Members [14]) going forward and to make a modest profit, as described below, the Exchange is proposing to modify its Fee Schedule, pursuant to MEMX Rules 15.1(a) and (c), to charge a fee of $6,000 per month for each physical connection in the data center where the Exchange primarily operates under normal market conditions (''Primary Data Center'') and a fee of $3,000 per month for each physical connection in the Exchange's geographically diverse data center, which is operated for backup and disaster recovery purposes (''Secondary Data Center''), each as further described below. The Exchange also proposes to modify its Fee Schedule, pursuant to MEMX Rules 15.1(a) and (c), to charge a fee of $450 per month for each application session used for order entry (''Order Entry Port'') and application session for receipt of drop copies (''Drop Copy Port'') in the Exchange's Primary Data Center, as further described below.[15]

Cost Analysis

Background on Cost Analysis

In October 2021, MEMX completed a study of its aggregate costs to produce market data and connectivity (the ''Cost Analysis''). The Cost Analysis required a detailed analysis of MEMX's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services, physical connectivity, and application sessions (which provide order entry, cancellation and modification functionality, risk functionality, ability to receive drop copies, and other functionality). MEMX separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (''cost drivers''). Next, MEMX adopted an allocation methodology with various principles to guide how much of a particular cost should be allocated to each core service. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (75%), with smaller allocations to logical ports (2.6%), and the remainder to the provision of transaction execution and market data services (22.4%). In contrast, costs that are driven largely by client activity (*e.g.,* message rates), were not allocated to physical connectivity at all but were allocated primarily to the provision of transaction execution and market data services (90%) with a smaller allocation to application sessions (10%). The allocation methodology was decided through conversations with senior management familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an estimated allocation of each cost driver to each core service, resulting in the cost allocations described below.

By allocating segmented costs to each core service, MEMX was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has four primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these four primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity, only Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange, many Members (but not all) consume market data from the Exchange in order

[7] 15 U.S.C. 78s(b)(1).

[8] 17 CFR 240.19b–4.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(8).

[13] In 2019, Commission staff published guidance suggesting the types of information that SROs may use to demonstrate that their fee filings comply with the standards of the Exchange Act (''Fee Guidance''). While MEMX understands that the Fee Guidance does not create new legal obligations on SROs, the Fee Guidance is consistent with MEMX's view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019) available at *https://www.sec.gov/tm/staff-guidancesro-rule-filings-fees.*

[14] Types of market participants that obtain connectivity services from the Exchange but are not Members include service bureaus and extranets. Service bureaus offer technology-based services to other companies for a fee, including order entry services to Members, and thus, may access application sessions on behalf of one or more Members. Extranets offer physical connectivity services to Members and non-Members.

[15] As proposed, fees for connectivity services would be assessed based on each active connectivity service product at the close of business on the first day of each month. If a product is cancelled by a Member's submission of a written request or via the MEMX User Portal prior to such fee being assessed then the Member will not be obligated to pay the applicable product fee. MEMX will not return pro-rated fees even if a product is not used for an entire month.

to trade on the Exchange, and the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the Exchange believes are reasonable, as set forth below.

Through the Exchange's extensive Cost Analysis, the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of connectivity services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of connectivity services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to network connectivity services. In turn, the Exchange allocated certain costs more to physical connectivity and others to applications, while certain costs were only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, MEMX estimates that the cost drivers to provide connectivity services, including both physical connections and application sessions, result in an aggregate monthly cost of $1,143,715, as further detailed below.

Costs Related to Offering Physical Connectivity

The following chart details the individual line-item costs considered by MEMX to be related to offering physical connectivity as well as the percentage of the Exchange's overall costs such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 13.8% of its overall Human Resources cost to offering physical connectivity).

Costs drivers	Costs	% of all
Human Resources	$262,129	13.8
Connectivity (external fees, cabling, switches, etc.)	162,000	75.0
Data Center	219,000	75.0
External Market Data	n/a	n/a
Hardware and Software Licenses	4,507	1.2
Monthly Depreciation	99,328	18.5
Allocated Shared Expenses	48,826	10.0
Total	795,789	20.1

Below are additional details regarding each of the line-item costs considered by MEMX to be related to offering physical connectivity.

Human Resources

For personnel costs (Human Resources), MEMX calculated an allocation of employee time for employees whose functions include providing and maintaining physical connectivity and performance thereof (primarily the MEMX network infrastructure team, which spends most of their time performing functions necessary to provide physical connectivity) and for which the Exchange allocated 75% of each employee's time. The Exchange also allocated Human Resources costs to provide physical connectivity to a limited subset of personnel with ancillary functions related to establishing and maintaining such connectivity (such as information security and finance personnel), for which the Exchange allocated cost on an employee-by-employee basis (*i.e.,* only including those personnel who do support functions related to providing physical connectivity) and then applied a smaller allocation to such employees (less than 20%). The Exchange notes that it has fewer than seventy (70) employees and each department leader has direct knowledge of the time spent by those spent by each employee with respect to the various tasks necessary to operate the Exchange. The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing physical connectivity, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing physical connectivity. The Exchange notes that senior level executives were only allocated Human Resources costs to the extent the Exchange believed they are involved in overseeing tasks related to providing physical connectivity. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity

The Connectivity cost includes external fees paid to connect to other exchanges and third parties, cabling and switches required to operate the Exchange. The Exchange notes that it previously labeled this line item as ''Infrastructure and Connectivity'' but has eliminated the reference to Infrastructure because several other line-item costs could be considered infrastructure given the generality of that term. The Connectivity line-item is more narrowly focused on technology used to complete connections to the Exchange and to connect to external markets. The Exchange notes that its connectivity to external markets is required in order to receive market data to run the Exchange's matching engine and basic operations compliant with existing regulations, primarily Regulation NMS.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment (such as dedicated space, security services, cooling and power). The Exchange notes that it does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties. The Exchange has allocated a high percentage of the Data Center cost (75%) to physical connectivity because the third-party data centers and the Exchange's physical equipment contained therein is the most direct cost in providing physical access to the Exchange. In other words, for the Exchange to operate in a dedicated space with connectivity of participants to a physical trading platform, the data centers are a very tangible cost, and in turn, if the Exchange did not maintain such a presence then physical connectivity would be of no value to market participants.

External Market Data

External Market Data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange notes that it did not allocate any External Market Data fees to the provision of physical connectivity as market data is not related to such services.

Hardware and Software Licenses

Hardware and Software Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer physical connectivity to the Exchange.

Monthly Depreciation

All physical assets and software, which also includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow efficient periodic technology refreshes. As noted above, the Exchange allocated 18.5% of all depreciation costs to providing physical connectivity. The Exchange notes, however, that it did not allocate depreciation costs for any depreciated software necessary to operate the Exchange to physical connectivity, as such software does not impact the provision of physical connectivity.

Allocated Shared Expenses

Finally, a limited portion of general shared expenses was allocated to overall physical connectivity costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide physical connectivity. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange notes that the cost of paying directors to serve on its Board of Directors is also included in the Exchange's general shared expenses, and thus a portion of such overall cost amounting to 10% of the overall cost for directors was allocated to providing physical connectivity. The Exchange notes that the 10% allocation of general shared expenses for physical connectivity is lower than that allocated to general shared expenses for application sessions based on its allocation methodology that weighted costs attributable to each Core Service based on an understanding of each area. While physical connectivity has several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Centers, as described above), physical connectivity does not require as many broad or indirect resources as other Core Services. The total monthly cost of $795,789 was divided by the number of physical connections the Exchange maintained at the time that proposed pricing was determined (143), to arrive at a cost of approximately $5,565 per month, per physical connection.

Costs Related to Offering Application Sessions

The following chart details the individual line-item costs considered by MEMX to be related to offering application sessions as well as the percentage of the Exchange's overall costs such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 7.7% of its overall Human Resources cost to offering application sessions).

Costs drivers[16]	Costs	% of all
Human Resources	$147,029	7.7
Connectivity (external fees, cabling, switches, etc.)	5,520	2.6
Data Center	7,462	2.6
External Market Data	10,734	7.5
Hardware and Software Licenses	37,771	10.1
Monthly Depreciation	44,843	8.3
Allocated Shared Expenses	94,567	19.4
Total	347,926	8.8

Human Resources

With respect to application sessions, MEMX calculated Human Resources cost by taking an allocation of employee time for employees whose functions include providing application sessions and maintaining performance thereof (including a broader range of employees such as technical operations personnel, market operations personnel, and software engineering personnel) as well as a limited subset of personnel with ancillary functions related to maintaining such connectivity (such as sales, membership, and finance personnel). The estimates of Human Resources cost were again determined by consulting with department leaders, determining which employees are involved in tasks related to providing application sessions and maintaining performance thereof, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing application sessions and maintaining performance thereof. The Exchange notes that senior level executives were only allocated Human Resources costs to the extent the Exchange believed they are involved in overseeing tasks related to providing application sessions and maintaining performance thereof. The Human Resources cost was again calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity

The Connectivity cost includes external fees paid to connect to other

[16] The Exchange notes that the total monthly cost set forth for application sessions ($347,926) is the same as that used for the Initial Proposal, the Second Proposal, and the Third Proposal, however the Exchange has modified the categorization of such fees in the table above as such categorization was inconsistent in the prior proposals between physical connectivity and application sessions. For instance, the Exchange included applicable depreciation expenses in the Hardware and Software Licenses category with respect to application sessions instead of the Monthly Depreciation category. As another example, the Exchange included applicable Data Center costs in the Connectivity category with respect to application sessions. The revised chart above corrects these inconsistencies.

exchanges, cabling and switches, as described above.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment as well as related costs (the Exchange does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties).

External Market Data

External Market Data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange allocated a small portion of External Market Data fees (7.5%) to the provision of application sessions as such market data is necessary to offer certain services related to such sessions, such as validating orders on entry against the national best bid and national best offer and checking for other conditions (*e.g.,* whether a symbol is halted or subject to a short sale circuit breaker). Thus, as market data from other Exchanges is consumed at the application session level in order to validate orders before additional processing occurs with respect to such orders, the Exchange believes it is reasonable to allocate a small amount of such costs to application sessions.

Hardware and Software Licenses

Hardware and Software Licenses includes hardware and software licenses used to monitor the health of the order entry services provided by the Exchange.

Monthly Depreciation

All physical assets and software, which also includes assets used for testing and monitoring of order entry infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which is owned by the Exchange and some of which is leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange allocated 8.3% of all depreciation costs to providing application sessions. In contrast to physical connectivity, described above, the Exchange did allocate depreciation costs for depreciated software necessary to operate the Exchange to application sessions because such software is related to the provision of such connectivity.

Allocated Shared Expenses

Finally, a limited portion of general shared expenses was allocated to overall application session costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide application sessions. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange again notes that the cost of paying directors to serve on its Board of Directors is included in the calculation of Allocated Shared Expenses, and thus a portion of such overall cost amounting to less than 20% of the overall cost for directors was allocated to providing application sessions. The Exchange notes that the 19.4% allocation of general shared expenses for application sessions is higher than that allocated to general shared expenses for physical connectivity based on its allocation methodology that weighted costs attributable to each Core Service based on an understanding of each area. While physical connectivity has several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Centers, as described above), application sessions require a broader level of support from Exchange personnel in different areas, which in turn leads to a broader general level of cost to the Exchange. The total monthly cost of $347,926 was divided by the number of application sessions the Exchange maintained at the time that proposed pricing was determined (835), to arrive at a cost of approximately $417 per month, per application session.

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core services (including physical connectivity or application sessions) and did not double-count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal and the filing it recently submitted proposing fees for proprietary data feeds offered by the Exchange. For instance, in calculating the Human Resources expenses to be allocated to physical connections, the Exchange has a team of employees dedicated to network infrastructure and with respect to such employees the Exchange allocated network infrastructure personnel with a high percentage of the cost of such personnel (75%) given their focus on functions necessary to provide physical connections. The salaries of those same personnel were allocated only 2.5% to application sessions and the remaining 22.5% was allocated to transactions and market data. The Exchange did not allocate any other Human Resources expense for providing physical connections to any other employee group outside of a smaller allocation (19%) of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel. In contrast, the Exchange allocated much smaller percentages of costs (11% or less) across a wider range of personnel groups in order to allocate Human Resources costs to providing application sessions. This is because a much wider range of personnel are involved in functions necessary to offer, monitor and maintain application sessions but the tasks necessary to do so are not a primary or full-time function.

In total, the Exchange allocated 13.8% of its personnel costs to providing physical connections and 7.7% of its personnel costs to providing application sessions, for a total allocation of 21.5% Human Resources expense to provide connectivity services. In turn, the Exchange allocated the remaining 78.5% of its Human Resources expense to membership (less than 1%) and transactions and market data (77.5%). Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including physical connections and application sessions, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide connectivity services to its Members and non-Members and their customers. However, the Exchange did not allocate all of the depreciation and amortization expense

toward the cost of providing connectivity services, but instead allocated approximately 27% of the Exchange's overall depreciation and amortization expense to connectivity services (18.5% attributed to physical connections and 8.3% to application sessions). The Exchange allocated the remaining depreciation and amortization expense (approximately 73%) toward the cost of providing transaction services and market data.

Looking at the Exchange's operations holistically, the total monthly costs to the Exchange for offering core services is $3,954,537. Based on the initial four months of billing for connectivity services, the Exchange expects to collect its original estimate of $1,233,750 on a monthly basis for such services.[17] Incorporating this amount into the Exchange's overall projected revenue, including projections related to recently adopted market data fees, the Exchange anticipates monthly revenue ranging from $4,296,950 to $4,546,950 from all sources (*i.e.,* connectivity fees and membership fees that were introduced in January 2022, transaction fees, and revenue from market data, both through the fees adopted in April 2022 and through the revenue received from the SIPs). As such, applying the Exchange's holistic Cost Analysis to a holistic view of anticipated revenues, the Exchange would earn approximately 8.5% to 15% margin on its operations as a whole. The Exchange believes that this amount is reasonable.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. As a new entrant to the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from connectivity, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity and/or application sessions or in obtaining new clients that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

To the extent the Exchange is successful in gaining market share, improving its net capture on transaction fees, encouraging new clients to connect directly to the Exchange, and other developments that would help to increase Exchange revenues, the Exchange does not believe it should be penalized for such success. The Exchange, like other exchanges, is, after all, a for-profit business. Accordingly, while the Exchange believes in transparency around costs and potential margins as well as periodic review of costs and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes its Cost Analysis and related projections demonstrate this fact.

The Exchange notes that the Cost Analysis was based on the Exchange's first year of operations and projections for the next year (which is currently underway). As such, the Exchange believes that its costs will remain relatively similar in future years. It is possible however that such costs will either decrease or increase. To the extent the Exchange sees growth in use of connectivity services it will receive additional revenue to offset future cost increases. However, if use of connectivity services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange would propose to decrease fees in the event that revenue materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, we believe that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Proposed Fees

Physical Connectivity Fees

MEMX offers its Members the ability to connect to the Exchange in order to transmit orders to and receive information from the Exchange. Members can also choose to connect to MEMX indirectly through physical connectivity maintained by a third-party extranet. Extranet physical connections may provide access to one or multiple Members on a single connection. Users of MEMX physical connectivity services (both Members and non-Members [18]) seeking to establish one or more connections with the Exchange submit a request to the Exchange via the MEMX User Portal or directly to Exchange personnel. Upon receipt of the completed instructions, MEMX establishes the physical connections requested by the User. The number of physical connections assigned to each User as of April 29, 2022, ranges from one to ten, depending on the scope and scale of the Member's trading activity on the Exchange as determined by the Member, including the Member's determination of the need for redundant connectivity. The Exchange notes that 44% of its Members do not maintain a physical connection directly with the Exchange in the Primary Data Center (though many such Members have connectivity through a third-party provider) and another 44% have either one or two physical ports to connect to the Exchange in the Primary Data Center. Thus, only a limited number of Members, 12%, maintain three or more physical ports to connect to the Exchange in the Primary Data Center.

As described above, in order to cover the aggregate costs of providing physical connectivity to Users and make a modest profit, as described below, the Exchange is proposing to charge a fee of $6,000 per month for each physical connection in the Primary Data Center and a fee of $3,000 per month for each physical connection in the Secondary

[17] The Exchange notes that it has charged connectivity services for four months and so far the average amount expected is very close to the estimated revenue provided in the Initial Proposal. Specifically, the Exchange has earned an estimated $1,246,700 ($12,950 more than projected) for connectivity services on an average basis over January through April. The Exchange believes this difference is immaterial for purposes of this proposal and thus, will continue to use the original estimated revenue of $1,233,750 for purposes of this proposal.

[18] *See supra* note 14.

Data Center. There is no requirement that any Member maintain a specific number of physical connections and a Member may choose to maintain as many or as few of such connections as each Member deems appropriate. The Exchange notes, however, that pursuant to Rule 2.4 (Mandatory Participation in Testing of Backup Systems), the Exchange does require a small number of Members to connect and participate in functional and performance testing as announced by the Exchange, which occurs at least once every 12 months. Specifically, Members that have been determined by the Exchange to contribute a meaningful percentage of the Exchange's overall volume must participate in mandatory testing of the Exchange's backup systems (*i.e.,* such Members must connect to the Secondary Data Center). The Exchange notes that Members that have been designated are still able to use third-party providers of connectivity to access the Exchange at its Secondary Data Center, and that one such designated Member does use a third-party provider instead of connecting directly to the Secondary Data Center through connectivity provided by the Exchange.[19] Nonetheless, because some Members are required to connect to the Secondary Data Center pursuant to Rule 2.4 and to encourage Exchange Members to connect to the Secondary Data Center generally, the Exchange has proposed to charge one-half of the fee for a physical connection in the Primary Data Center. The Exchange notes that its costs related to operating the Secondary Data Center were not separately calculated for purposes of this proposal, but instead, all costs related to providing physical connections were considered in aggregate. The Exchange believes this is appropriate because had the Exchange calculated such costs separately and then determined the fee per physical connection that would be necessary for the Exchange to cover its costs for operating the Secondary Data Center, the costs would likely be much higher than those proposed for connectivity at the Primary Data Center because Members maintain significantly fewer connections at the Secondary Data Center. The Exchange believes that charging a higher fee for physical connections at the Secondary Data Center would be inconsistent with its objective of encouraging Members to connect at such data center and is inconsistent with the fees charged by other exchanges, which also provide connectivity for disaster recovery purposes at a discounted rate.[20]

The proposed fee will not apply differently based upon the size or type of the market participant, but rather based upon the number of physical connections a User requests, based upon factors deemed relevant by each User (either a Member, service bureau or extranet). The Exchange believes these factors include the costs to maintain connectivity, business model and choices Members make in how to participate on the Exchange, as further described below.

The proposed fee of $6,000 per month for physical connections at the Primary Data Center is designed to permit the Exchange to cover the costs allocated to providing connectivity services with a modest markup (approximately 8%), which would also help fund future expenditures (increased costs, improvements, etc.). The Exchange believes it is appropriate to charge fees that represent a reasonable markup over cost given the other factors discussed above and the need for the Exchange to maintain a highly performant and stable platform to allow Members to transact with determinism. The Exchange also reiterates that the Exchange did not charge any fees for connectivity services prior to January 2022, and its allocation of costs to physical connections was part of a holistic allocation that also allocated costs to other core services without double-counting any expenses. As such, the proposal only truly constitutes a ''markup'' to the extent the Exchange recovers the initial costs of building the network and infrastructure necessary to offer physical connectivity and operating the Exchange for over a year without connectivity fees.

As noted above, the Exchange proposes a discounted rate of $3,000 per month for physical connections at its Secondary Data Center. The Exchange has proposed this discounted rate for Secondary Data Center connectivity in order to encourage Members to establish and maintain such connections. Also, as noted above, a small number of Members are required pursuant to Rule 2.4 to connect and participate in testing of the Exchange's backup systems, and the Exchange believes it is appropriate to provide a discounted rate for physical connections at the Secondary Data Center given this requirement. The Exchange notes that this rate is well below the cost of providing such services and the Exchange will operate its network and systems at the Secondary Data Center without recouping the full amount of such cost through connectivity services.

The proposed fee for physical connections is effective on filing and will become operative immediately.

Application Session Fees

Similar to other exchanges, MEMX offers its Members application sessions, also known as logical ports, for order entry and receipt of trade execution reports and order messages. Members can also choose to connect to MEMX indirectly through a session maintained by a third-party service bureau. Service bureau sessions may provide access to one or multiple Members on a single session. Users of MEMX connectivity services (both Members and non-Members[21]) seeking to establish one or more application sessions with the Exchange submit a request to the Exchange via the MEMX User Portal or directly to Exchange personnel. Upon receipt of the completed instructions, MEMX assigns the User the number of sessions requested by the User. The number of sessions assigned to each User as of April 29, 2022, ranges from one to more than 100, depending on the scope and scale of the Member's trading activity on the Exchange (either through a direct connection or through a service bureau) as determined by the Member. For example, by using multiple sessions, Members can segregate order flow from different internal desks, business lines, or customers. The Exchange does not impose any minimum or maximum requirements for how many application sessions a Member or service bureau can maintain, and it is not proposing to impose any minimum or maximum session requirements for its Members or their service bureaus.

As described above, in order to cover the aggregate costs of providing application sessions to Users and to make a modest profit, as described below, the Exchange is proposing to charge a fee of $450 per month for each Order Entry Port and Drop Copy Port in the Primary Data Center. The Exchange notes that it does not propose to charge for: (1) Order Entry Ports or Drop Copy Ports in the Secondary Data Center, or (2) any Test Facility Ports or MEMOIR Gap Fill Ports. The Exchange has proposed to provide Order Entry Ports and Drop Copy Ports in the Secondary Data Center free of charge in order to encourage Members to connect to the

[19] The Exchange also notes that a second designated Member that is required to participate in mandatory testing with the Exchange for the first time this year has not yet connected to the Exchange in the Secondary Data Center and has indicated that it is likely to use a third-party provider.

[20] *See, e.g.,* the BZX equities fee schedule, available at: *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/*.

[21] *See supra* note 14.

Exchange's backup trading systems. Similarly, because the Exchange wishes to encourage Members to conduct appropriate testing of their use of the Exchange, the Exchange has not proposed to charge for Test Facility Ports. With respect to MEMOIR Gap Fill ports, such ports are exclusively used in order to receive information when a market data recipient has temporarily lost its view of MEMX market data. The Exchange has not proposed charging for such ports because the costs of providing and maintaining such ports is more directly related to producing market data.

The proposed fee of $450 per month for each Order Entry Port and Drop Copy Port in the Primary Data Center is designed to permit the Exchange to cover the costs allocated to providing application sessions with a modest markup (approximately 8%), which would also help fund future expenditures (increased costs, improvements, etc.). The Exchange also reiterates that the Exchange did not charge any fees for connectivity services prior to January 2022, and its allocation of costs to application sessions was part of a holistic allocation that also allocated costs to other core services without double-counting any expenses. As such, the proposal only truly constitutes a ''markup'' to the extent the Exchange recovers the initial costs of building the network and infrastructure necessary to offer application sessions and operating the Exchange for over a year without connectivity fees.

The proposed fee is also designed to encourage Users to be efficient with their application session usage, thereby resulting in a corresponding increase in the efficiency that the Exchange would be able to realize in managing its aggregate costs for providing connectivity services. There is no requirement that any Member maintain a specific number of application sessions and a Member may choose to maintain as many or as few of such ports as each Member deems appropriate. The Exchange has designed its platform such that Order Entry Ports can handle a significant amount of message traffic (*i.e.,* over 50,000 orders per second), and has no application flow control or order throttling. In contrast, other exchanges maintain certain thresholds that limit the amount of message traffic that a single logical port can handle.[22] As such, while several Members maintain a relatively high number of ports because that is consistent with their usage on other exchanges and is preferable for their own reasons, the Exchange believes that it has designed a system capable of allowing such Members to significantly reduce the number of application sessions maintained.

The proposed fee will not apply differently based upon the size or type of the market participant, but rather based upon the number of application sessions a User requests, based upon factors deemed relevant by each User (either a Member or service bureau on behalf of a Member). The Exchange believes these factors include the costs to maintain connectivity and choices Members make in how to segment or allocate their order flow.[23]

The proposed fee for application sessions is effective on filing and will become operative immediately.

Proposed Fees—Additional Discussion

As discussed above, the proposed fees for connectivity services do not by design apply differently to different types or sizes of Members. As discussed in more detail in the Statutory Basis section, the Exchange believes that the likelihood of higher fees for certain Members subscribing to connectivity services usage than others is not unfairly discriminatory because it is based on objective differences in usage of connectivity services among different Members. The Exchange's incremental aggregate costs for all connectivity services are disproportionately related to Members with higher message traffic and/or Members with more complicated connections established with the Exchange, as such Members: (1) consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high-touch network support services provided by the Exchange and its staff, including network monitoring, reporting and support services, resulting in a much higher cost to the Exchange to provide such connectivity services. For these reasons, MEMX believes it is not unfairly discriminatory for the Members with higher message traffic and/or Members with more complicated connections to pay a higher share of the total connectivity services fees. While Members with a business model that results in higher relative inbound message activity or more complicated connections are projected to pay higher fees, the level of such fees is based solely on the number of physical connections and/or application sessions deemed necessary by the Member and not on the Member's business model or type of Member. The Exchange notes that the correlation between message traffic and usage of connectivity services is not completely aligned because Members individually determine how many physical connections and application sessions to request, and Members may make different decisions on the appropriate ways based on facts unique to their individual businesses. Based on the Exchange's architecture, as described above, the Exchange believes that a Member even with high message traffic would be able to conduct business on the Exchange with a relatively small connectivity services footprint.

Because the Exchange has already adopted fees for connectivity services, the Exchange has initial results of the impact such fees have had on Member and non-Member usage of connectivity services. Since the fees went into effect as set forth in the Initial Proposal, nine (9) customers with physical connectivity to the Exchange have canceled one or more of their physical connections. These cancellations resulted in an approximate 6% drop in the physical connectivity offered by the Exchange prior to the Exchange charging for such connectivity.[24] In each instance, the customer told the Exchange that its reason for cancelling its connectivity was the imposition of fees. Of these customers, two (2) customers canceled services entirely, three (3) maintained at least one physical connection provided directly by the Exchange, and the remaining four (4) customers migrated to alternative sources of connectivity through a third-party provider. As such, some market participants (one market data provider

[22] *See, e.g.,* Cboe US Equities BOE Specification, *available at: https://cdn.cboe.com/resources/membership/Cboe_US_Equities_BOE_Specification.pdf* (describing a 5,000 message per second Port Order Rate Threshold on Cboe BOE ports).

[23] The Exchange understands that some Members (or service bureaus) may also request more Order Entry Ports to enable the ability to send a greater number of simultaneous order messages to the Exchange by spreading orders over more Order Entry Ports, thereby increasing throughput (*i.e.,* the potential for more orders to be processed in the same amount of time). The degree to which this usage of Order Entry Ports provides any throughput advantage is based on how a particular Member sends order messages to MEMX, however the Exchange notes that its architecture reduces the impact or necessity of such a strategy. All Order Entry Ports on MEMX provide the same throughput, and as noted above, the throughput is likely adequate even for a Member sending a significant amount of volume at a fast pace, and is not artificially throttled or limited in any way by the Exchange.

[24] The Exchange notes that despite these cancellations, the Exchange has since had existing customers and new customers order physical connectivity that has resulted in the Exchange maintaining nearly the same amount of physical connections for customers as it did prior to the imposition of fees.

and one extranet) determined that they no longer wanted to connect to the Exchange directly or through a third party as it was not necessary for their business and their initial connection was only worthwhile so long as services were provided free of charge. Other market participants (one market data provider, one extranet and one Member) determined that they still wished to be directly connected to the Exchange but did not need as many connections. Finally, some market participants (one market data provider, one service bureau and two trading participants) determined that there was a more affordable alternative through a third-party provider of connectivity services. As a general matter, the customers that discontinued use of physical connectivity or transitioned to a third-party provider of connectivity services were either connected purely to consume market data for their own purposes or distribution to others, were themselves extranets or service bureaus providing alternatives to the Exchange's connectivity services, or were smaller trading firms that elected not to participate on the Exchange directly and likely connected initially due to the fact that there were no fees to connect.

Additionally, since the Exchange began charging for application sessions, five (5) customers have canceled a total of thirty (30) application sessions (approximately 3.5% of all customer application sessions) due to the fees adopted by the Exchange.[25] As a general matter, these customers determined that the number of application sessions that they maintained was not necessary in order to participate on the Exchange.

Based on its experience since adopting the proposed fees in January, the Exchange believes that there is ample evidence showing that it is subject to competitive forces when setting fees for physical connectivity and application sessions. Indeed, the evidence shows that firms can choose not to purchase those services, reduce consumption, or rely on external third-party providers in response to proposed fees. These competitive forces ensure that the Exchange cannot charge supra-competitive fees for connectivity services. In fact, as a new entrant to the exchange industry, the Exchange is particularly subject to competitive forces and has carefully crafted its current and proposed fees with the goal of growing its business. In this environment, the Exchange has no ability to set fees at levels that would be deemed supra-competitive as doing so would limit the Exchange's ability to compete with its larger, established competitors.

Finally, the fees for connectivity services will help to encourage connectivity services usage in a way that aligns with the Exchange's regulatory obligations. As a national securities exchange, the Exchange is subject to Regulation Systems Compliance and Integrity (''Reg SCI'').[26] Reg SCI Rule 1001(a) requires that the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to ensure (among other things) that its Reg SCI systems have levels of capacity adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[27] By encouraging Users to be efficient with their usage of connectivity services, the proposed fee will support the Exchange's Reg SCI obligations in this regard by ensuring that unused application sessions are available to be allocated based on individual User needs and as the Exchange's overall order and trade volumes increase. As noted above, based on early results, the adoption of fees has led to certain firms reducing the number of application sessions maintained now that such sessions are no longer provided free of charge. Additionally, because the Exchange will charge a lower rate for a physical connection to the Secondary Data Center and will not charge any fees for application sessions at the Secondary Data Center or its Test Facility, the proposed fee structure will further support the Exchange's Reg SCI compliance by reducing the potential impact of a disruption should the Exchange be required to switch to its Disaster Recovery Facility and encouraging Members to engage in any necessary system testing with low or no cost imposed by the Exchange.[28]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[29] of the Act in general, and furthers the objectives of Section 6(b)(4)[30] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Additionally, the Exchange believes that the proposed fees are consistent with the objectives of Section 6(b)(5)[31] of the Act in that they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to a free and open market and national market system, and, in general, to protect investors and the public interest, and, particularly, are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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.''[32] One of the primary objectives of MEMX is to provide competition and to reduce fixed costs imposed upon the industry. Consistent with this objective, the Exchange believes that this proposal reflects a simple, competitive, reasonable, and equitable pricing structure designed to permit the Exchange to cover certain fixed costs that it incurs for providing connectivity services, which are discounted when compared to products and services offered by competitors.[33]

Commission staff noted in its Fee Guidance that, as an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces. To determine whether a proposed fee is constrained by significant competitive forces, staff has

[25] The Exchange notes that, as was the case with respect to physical connectivity, the Exchange has since had existing customers and new customers order additional application sessions that has resulted in the Exchange maintaining nearly the same amount of application sessions for customers as it did prior to the imposition of fees.

[26] 17 CFR 242.1000–1007.

[27] 17 CFR 242.1001(a).

[28] While some Members might directly connect to the Secondary Data Center and incur the proposed $3,000 per month fee, there are other ways to connect to the Exchange, such as through a service bureau or extranet, and because the Exchange is not imposing fees for application sessions in the Secondary Data Center, a Member connecting through another method would not incur any fees charged directly by the Exchange. However, the Exchange notes that a third-party service provider providing connectivity to the Exchange likely would charge a fee for providing such connectivity; such fees are not set by or shared in by the Exchange.

[29] 15 U.S.C. 78f.

[30] 15 U.S.C. 78f(b)(4).

[31] 15 U.S.C. 78f(b)(5).

[32] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[33] *See infra* notes 39–44 and accompanying text.

said that it considers whether the evidence demonstrates that there are reasonable substitutes for the product or service that is the subject of a proposed fee. There is no regulatory requirement that any market participant connect to the Exchange, that any participant connect in a particular manner, or that any participant maintain a certain number of connections to the Exchange. The Exchange reiterates that a small number of Members are required to connect to the Exchange for participation in mandatory testing of backup systems but such connectivity does not have to be obtained directly from the Exchange but instead can be through a third-party provider that provides connectivity to the Exchange. The Exchange again notes that at least one designated Member does, in fact, connect to the Exchange at the Secondary Data Center through a third-party provider.

The Exchange also acknowledges that certain market participants operate businesses that do, in fact, require them to be connected to all U.S. equity exchanges. For instance, certain Members operate as routing brokers for other market participants. As an equities exchange with approximately 4% volume, these routing brokers likely need to maintain a connection to the Exchange on behalf of their clients. However, it is connectivity services provided by the Exchange that allow such participants to offer their clients a service for which they can be compensated (and allowing their clients not to directly connect but still to access the Exchange), and, as such, the Exchange believes it is reasonable, equitably allocated and not unfairly discriminatory to charge such Members for connectivity services.

As a new entrant to the equities market, the Exchange does not have as Members many market participants that actively trade equities on other exchanges nor are such market participants directly connected to the Exchange. There are also a number of the Exchange's Members that do not connect directly to MEMX. For instance, of the number of Members that maintain application sessions to participate directly on the Exchange, many such Members do not maintain physical connectivity but instead access the Exchange through a service bureau or extranet. In addition, of the Members that are directly connected to MEMX, it is generally the individual needs of the Member that dictate whether they need one or multiple physical connections to the Exchange as well as the number of application sessions that they will maintain. It is all driven by the business needs of the Member, and as described above, the Exchange believes it offers technology that will enable Members to maintain a smaller connectivity services footprint than they do on other markets.

The Exchange's experience as a new entrant to the market over the past year shows that all broker-dealers are not required to connect to all exchanges, including the Exchange. Instead, many market participants awaited the Exchange growing to a certain percentage of market share before they would join as a Member or connect to the Exchange. In addition, many market participants still have not connected despite the Exchange's growth in one year to more than 4% of the overall equities market share. Thus, the Exchange recognizes that the decision of whether to connect to the Exchange is separate and distinct from the decision of whether and how to trade on the Exchange. This is because there are multiple alternatives to directly participating on the Exchange (such as use of a third-party routing broker to access the Exchange) or directly connecting to the Exchange (such as use of an extranet or service bureau). The Exchange acknowledges that many firms may choose to connect to the Exchange, but ultimately not trade on it, based on their particular business needs. The decision of which type of connectivity to purchase, or whether to purchase connectivity at all, is based on the business needs of each individual firm.

There is also competition for connectivity to the Exchange. For instance, the Exchange competes with certain non-Members who provide connectivity and access to the Exchange, namely extranets and service bureaus. These are resellers of MEMX connectivity—they are not arrangements between broker-dealers to share connectivity costs. Those non-Members resell that connectivity to multiple market participants over the same connection. When physical connectivity is re-sold by a third-party, the Exchange will not receive any connectivity revenue from that sale, and without connectivity fees for the past year, such third parties have been able to re-sell something they receive for free. Such arrangements are entirely between the third-party and the purchaser, thus constraining the ability of MEMX to set its connectivity pricing as indirect connectivity is a substitute for direct connectivity.

The Exchange has not proposed to charge third party connectivity providers a different rate for connectivity than other market participants and, thus, such third-party providers can provide connectivity at a reduced rate to that provided directly by the Exchange while covering their costs of connecting to the Exchange and many are likely able to generate a profit that makes it worthwhile for them to offer such services. The Exchange acknowledges that if it were to charge higher connectivity fees to third-party connectivity providers than other market participants that the ability for such third-party connectivity providers to offer market participants a reduced fee based on economies of scale would be compromised. The Exchange also acknowledges that some third-party connectivity providers that provide connectivity to exchanges generally may need to maintain connectivity to the Exchange in order to maintain existing client relationships, though again, the Exchange does not set or share in the fees charged by such third-party providers and believes that such providers are able to price connectivity services with their clients appropriately to cover their costs and/or generate a profit.

Indirect connectivity is a viable alternative that is already being used by Members and non-Members of MEMX, constraining the price that the Exchange is able to charge for connectivity to its Exchange. As set forth above, nearly half of the Exchange's Members do not have a physical connection provided by the Exchange and instead must use a third-party provider. Members who have not established any connectivity to the Exchange are still able to trade on the Exchange indirectly through other Members or non-Member extranets or service bureaus that are connected. These Members will not be forced or compelled to purchase physical connectivity services, and they retain all of the other benefits of membership with the Exchange. Accordingly, Members have the choice to purchase physical connectivity and are not compelled to do so. The Exchange notes that without an application session, specifically an Order Entry Port, a Member could not submit orders to the Exchange. As such, while application sessions too can be obtained from a third-party reseller (*i.e.,* a service bureau) the Exchange will receive revenue either from the Member or the third-party service bureau for each application session. However, as noted elsewhere, the Exchange has designed its platform such that Order Entry Ports can handle a significant amount of message traffic (*i.e.,* over 50,000 orders per second), and has no application flow control or order throttling. As such, the Exchange believes that it has designed a system capable of allowing

such Members to significantly reduce the number of application sessions maintained.

As described above, the Exchange has seen certain Members and non-Members discontinue or change their usage of connectivity services provided by the Exchange in response to the fees adopted by the Exchange. Specifically, nine (9) participants reduced or discontinued use of connectivity services provided directly by the Exchange and five (5) participants reduced the number of application sessions used to participate on the Exchange. The Exchange believes that this demonstrates that not all market participants are required to use connectivity services provided by the Exchange but can instead choose to participate on the Exchange through a third-party provider of connectivity services, indirectly through another Member of the Exchange, or not at all. The Exchange also notes that of the participants that reduced or discontinued their use of connectivity services, several were in fact third-party providers of connectivity services, which demonstrates that such providers will connect to the Exchange to the extent they have sufficient clients to whom they can provide connectivity services and make a profit but they will not connect if this is not the case.

The Exchange believes that the proposed fees for connectivity services are reasonable, equitable and not unfairly discriminatory because, as described above, the proposed pricing for connectivity services is directly related to the relative costs to the Exchange to provide those respective services and does not impose a barrier to entry to smaller participants. Accordingly, the Exchange offers direct connectivity alternatives and various indirect connectivity (via third-party) alternatives, as described above.

The Exchange recognizes that there are various business models and varying sizes of market participants conducting business on the Exchange. The Exchange's incremental aggregate costs for all connectivity services are disproportionately related to Members with higher message traffic and/or Members with more complicated connections established with the Exchange, as such Members: (1) consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high-touch network support services provided by the Exchange and its staff, including network monitoring, reporting and support services, resulting in a much higher cost to the Exchange to provide such connectivity services. Accordingly, the Exchange believes the allocation of the proposed fees that increase based on the number of physical connections or application sessions is reasonable based on the resources consumed by the respective type of market participant (*i.e.,* lowest resource consuming Members will pay the least, and highest resource consuming Members will pay the most), particularly since higher resource consumption translates directly to higher costs to the Exchange.

With respect to equities trading, the Exchange had approximately 4.3% market share of the U.S. equities industry in February 2022.[34] The Exchange is not aware of any evidence that a market share of approximately 4% provides the Exchange with supra-competitive pricing power because, as shown above, market participants that choose to connect to the Exchange have various choices in determining how to do so, including third party alternatives. This, in addition to the fact that not all broker-dealers are required to connect to the Exchange, supports the Exchange's conclusion that its pricing is constrained by competition.

Several market participants choose not to be Members of the Exchange and choose not to access the Exchange, and several market participants also access the Exchange indirectly through another market participant. To illustrate, the Exchange currently has 65 Members. However, based on publicly available information regarding a sample of the Exchange's competitors, the New York Stock Exchange LLC (''NYSE'') has 142 members, Cboe BZX Exchange, Inc. (''BZX'') has 140 members, and Investors Exchange LLC (''IEX'') has 133 members.[35] If all market participants were required to be Members of the Exchange and connect directly to the Exchange, the Exchange would have over 130 Members, in line with these other exchanges. But it does not. The Exchange currently has approximately half of the number of members as compared to these other exchanges.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their connections and cease being Members of the Exchange if the Exchange were to establish unreasonable and uncompetitive prices for its connectivity services. Market participants choose to connect to a particular exchange and because it is a choice, MEMX must set reasonable pricing for connectivity services, otherwise prospective Members would not connect and existing Members would disconnect, connect through a third-party reseller of connectivity, or otherwise access the Exchange indirectly. The Exchange reiterates that several Members and non-Members did in fact reduce or discontinue use of connectivity services provided directly by the Exchange in response to the fees adopted by the Exchange. No market participant is required by rule or regulation to be a Member of or connect directly to the Exchange, though again, the Exchange acknowledges that certain types of broker-dealers might be compelled by their business model to connect and also notes that pursuant to Rule 2.4, certain Members with significant volume on the Exchange are required to connect to the Exchange's backup systems for testing on at least an annual basis.

With regard to reasonableness, the Exchange understands that when appropriate given the context of a proposal the Commission has taken a market-based approach to examine whether the SRO making the proposal was subject to significant competitive forces in setting the terms of the proposal. In looking at this question, the Commission considers whether the SRO has demonstrated in its filing that: (i) there are reasonable substitutes for the product or service; (ii) ''platform'' competition constrains the ability to set the fee; and/or (iii) revenue and cost analysis shows the fee would not result in the SRO taking supra-competitive profits. If the SRO demonstrates that the fee is subject to significant competitive forces, the Commission will next consider whether there is any substantial countervailing basis to suggest the fee's terms fail to meet one or more standards under the Exchange Act. If the filing fails to demonstrate that the fee is constrained by competitive forces, the SRO must provide a substantial basis, other than competition, to show that it is consistent with the Exchange Act, which may include production of relevant revenue and cost data pertaining to the product or service.

As described above, the Exchange believes that competitive forces are in effect and that if the proposed fees for connectivity services were unreasonable that the Exchange would lose current or prospective Members and market share.

[34] Market share percentage calculated as of February 28, 2022. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

[35] *See* NYSE Membership Directory, available at: *https://www.nyse.com/markets/nyse/membership;* BZX Form 1 filed November 19, 2021, available at: *https://www.sec.gov/Archives/edgar/vprr/2100/21009368.pdf;* IEX Current Members list, available at: *https://exchange.iex.io/resources/trading/current-membership/.*

The Exchange reiterates that several market participants have in fact modified the way that they connect to the Exchange in response to the Exchange's pricing proposal. Further, the Exchange has conducted a comprehensive Cost Analysis in order to determine the reasonability of its proposed fees, including that the Exchange will not take supra-competitive profits.

MEMX believes the proposed fees for connectivity services are fair and reasonable as a form of cost recovery for the Exchange's aggregate costs of offering connectivity services to Members and non-Members. The proposed fees are expected to generate monthly revenue of $1,233,750 providing cost recovery to the Exchange for the aggregate costs of offering connectivity services, based on a methodology that narrowly limits the cost drivers that are allocated cost to those closely and directly related to the particular service. In addition, this revenue will allow the Exchange to continue to offer, to enhance, and to continually refresh its infrastructure as necessary to offer a state-of-the-art trading platform. The Exchange believes that, consistent with the Act, it is appropriate to charge fees that represent a reasonable markup over cost given the other factors discussed above. The Exchange also believes the proposed fee is a reasonable means of encouraging Users to be efficient in the connectivity services they reserve for use, with the benefits to overall system efficiency to the extent Members and non-Members consolidate their usage of connectivity services or discontinue subscriptions to unused physical connectivity.

The Exchange further believes that the proposed fees, as they pertain to purchasers of each type of connectivity alternative, constitute an equitable allocation of reasonable fees charged to the Exchange's Members and non-Members and are allocated fairly amongst the types of market participants using the facilities of the Exchange.

As described above, the Exchange believes the proposed fees are equitably allocated because the Exchange's incremental aggregate costs for all connectivity services are disproportionately related to Members with higher message traffic and/or Members with more complicated connections established with the Exchange, as such Members: (1) consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high-touch network support services provided by the Exchange and its staff, including network monitoring, reporting and support services, resulting in a much higher cost to the Exchange to provide such connectivity services.

Commission staff previously noted that the generation of supra-competitive profits is one of several potential factors in considering whether an exchange's proposed fees are consistent with the Act.[36] As described in the Fee Guidance, the term ''supra-competitive profits'' refers to profits that exceed the profits that can be obtained in a competitive market. The proposed fee structure would not result in excessive pricing or supra-competitive profits for the Exchange. The proposed fee structure is merely designed to permit the Exchange to cover the costs allocated to providing connectivity services with a modest markup (approximately 8%), which would also help fund future expenditures (increased costs, improvements, etc.). The Exchange believes that this is fair, reasonable, and equitable. Accordingly, the Exchange believes that its proposal is consistent with Section 6(b)(4) [37] of the Act because the proposed fees will permit recovery of the Exchange's costs and will not result in excessive pricing or supra-competitive profit.

The proposed fees for connectivity services will allow the Exchange to cover certain costs incurred by the Exchange associated with providing and maintaining necessary hardware and other network infrastructure as well as network monitoring and support services; without such hardware, infrastructure, monitoring and support the Exchange would be unable to provide the connectivity services. The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by adopting fees for connectivity services. As detailed above, the Exchange has four primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these four primary sources of revenue. The Exchange's Cost Analysis estimates the costs to provide connectivity services at $1,143,715. Based on current connectivity services usage, the Exchange would generate monthly revenues of approximately $1,233,750.[38] This represents a modest profit when compared to the cost of providing connectivity services. Even if the Exchange earns that amount or incrementally more, the Exchange believes the proposed fees for connectivity services are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total expense of MEMX associated with providing connectivity services versus the total projected revenue of the Exchange associated with network connectivity services. As noted above, when incorporating the projected revenue from connectivity services into the Exchange's overall projected revenue, including projections related to recently adopted market data fees, the Exchange anticipates monthly revenue ranging from $4,296,950 to $4,546,950 from all sources. As such, applying the Exchange's holistic Cost Analysis to a holistic view of anticipated revenues, the Exchange would earn approximately 8.5% to 15% margin on its operations as a whole. The Exchange believes that this amount is reasonable and is again evidence that the Exchange will not earn a supra-competitive profit.

The Exchange notes that other exchanges offer similar connectivity options to market participants and that the Exchange's fees are a discount as compared to the majority of such fees.[39] With respect to physical connections, each of the Nasdaq Stock Market LLC (''Nasdaq''), NYSE, NYSE Arca, Inc. (''Arca''), BZX and Cboe EDGX Exchange, Inc. (''EDGX'') charges between $7,500–$22,000 per month for physical connectivity at their primary data centers that is comparable to that

[36] *See* Fee Guidance, *supra* note 13.

[37] 15 U.S.C. 78f(b)(4).

[38] *See supra* note 17.

[39] One significant differentiation between the Exchanges is that while it offers different types of physical connections, including 10Gb, 25Gb, 40Gb, and 100Gb connections, the Exchange does not propose to charge different prices for such connections. In contrast, most of the Exchange's competitors provide scaled pricing that increases depending on the size of the physical connection. The Exchange does not believe that its costs increase incrementally based on the size of a physical connection but instead, that individual connections and the number of such separate and disparate connections are the primary drivers of cost for the Exchange.

offered by the Exchange.[40] Nasdaq, NYSE and Arca also charge installation fees, which are not proposed to be charged by the Exchange. With respect to application sessions, each of Nasdaq, NYSE, Arca, BZX and EDGX charges between $500–$575 per month for order entry and drop ports.[41] The Exchange further notes that several of these exchanges each charge for other logical ports that the Exchange will continue to provide for free, such as application sessions for testing and disaster recovery purposes.[42] While the Exchange's proposed connectivity fees are lower than the fees charged by Nasdaq, NYSE, Arca, BZX and EDGX, MEMX believes that it offers significant value to Members over these other exchanges in terms of bandwidth available over such connectivity services, which the Exchanges believes is a competitive advantage, and differentiates its connectivity versus connectivity to other exchanges.[43] Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.[44] The Exchange believes that its proposal to offer certain application sessions free of charge is reasonable, equitably allocated and not unfairly discriminatory because such proposal is intended to encourage Member connections and use of backup and testing facilities of the Exchange, and, with respect to MEMOIR Gap Fill ports, such ports are used exclusively in connection with the receipt and processing of market data from the Exchange.

In conclusion, the Exchange submits that its proposed fee structure satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act [45] for the reasons discussed above in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities, does not permit unfair discrimination between customers, issuers, brokers, or dealers, and is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest, particularly as the proposal neither targets nor will it have a disparate impact on any particular category of market participant. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that it is subject to significant competitive forces, and that the proposed fee structure is an appropriate effort to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[46] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, while the Exchange did not officially proposed fees until late December of 2021 when it filed the Initial Proposal, Exchange personnel had been informally discussing potential fees for connectivity services with a diverse group of market participants that are connected to the Exchange (including large and small firms, firms with large connectivity service footprints and small connectivity service footprints, as well as extranets and service bureaus) for several months leading up to that time. The Exchange received no official complaints from Members, non-Members (extranets or service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers, that the Exchange's fees or the proposed fees for connectivity services would negatively impact their abilities to compete with other market participants or that they are placed at a disadvantage.

As expected, the Exchange did, however, have several market participants reduce or discontinue use of connectivity services provided directly by the Exchange in response to the fees adopted by the Exchange. The Exchange does not believe that the proposed fees for connectivity services place certain market participants at a relative disadvantage to other market participants because the proposed connectivity pricing is associated with relative usage of the Exchange by each market participant and does not impose a barrier to entry to smaller participants. The Exchange notes that two smaller trading firms cancelled connectivity services and elected not to participate on the Exchange directly due to the imposition of fees but these participants were not actively participating on the Exchange prior to disconnecting and likely connected initially due to the fact that there were no fees to connect. The Exchange believes its proposed pricing is reasonable and, when coupled with the availability of third-party providers that also offer connectivity solutions, that participation on the Exchange is affordable for all market participants, including smaller trading firms. As described above, the connectivity services purchased by market participants typically increase based on their additional message traffic and/or the complexity of their operations. The market participants that utilize more connectivity services typically utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the proposed fees for connectivity services do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed connectivity fees reflects the network resources consumed by the various size of market participants and the costs to the Exchange of providing such connectivity services.

Inter-Market Competition

The Exchange does not believes the proposed fees place an undue burden on

[40] *See* the Nasdaq equities fee schedule, available at: *http://www.nasdaqtrader.com/trader.aspx?id=pricelisttrading2;* the NYSE fee schedule, available at: *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf;* the NYSE Arca equities fee schedule, available at: *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf;* the BZX equities fee schedule, available at: *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/;* the EDGX equities fee schedule, available at: *https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/.* This range is based on a review of the fees charged for 10–40Gb connections at each of these exchanges and relates solely to the physical port fee or connection charge, excluding co-location fees and other fees assessed by these exchanges. The Exchange notes that it does not offer physical connections with lower bandwidth than 10Gb and that Members and non-Members with lower bandwidth requirements typically access the Exchange through third-party extranets or service bureaus.

[41] *See id.*

[42] *See id.*

[43] As noted above, all physical connections offered by MEMX are at least 10Gb capable and physical connections provided with larger bandwidth capabilities will be provided at the same rate as such connections. In contrast to other exchanges, MEMX has not proposed different types of physical connections with higher pricing for those with greater capacity. *See supra* note 39. The Exchange also reiterates that MEMX application sessions are capable of handling significant amount of message traffic (*i.e.,* over 50,000 orders per second), and have no application flow control or order throttling, in contrast to competitors that have imposed message rate thresholds. *See supra* note 22 and accompanying text.

[44] *See supra* note 40.

[45] 15 U.S.C. 78f(b)(4) and (5).

[46] 15 U.S.C. 78f(b)(8).

competition on other SROs that is not necessary or appropriate. In particular, market participants are not forced to connect to all exchanges, as shown by the number of Members of the Exchange as compared to the much greater number of members at other exchanges, as described above. Not only does MEMX have less than half the number of members as certain other exchanges, but there are also a number of the Exchange's Members that do not connect directly to the Exchange. Additionally, other exchanges have similar connectivity alternatives for their participants, but with higher rates to connect.[47] The Exchange is also unaware of any assertion that the proposed fees for connectivity services would somehow unduly impair its competition with other exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [48] and Rule 19b–4(f)(2) [49] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2022–17 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–MEMX–2022–17. 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 Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2022–17 and should be submitted on or before August 11,2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–15545 Filed 7–20–22; 8:45 am]

BILLING CODE 8011–01–P

[47] *See supra* notes 39–44 and accompanying text.

[48] 15 U.S.C. 78s(b)(3)(A)(ii).

[49] 17 CFR 240.19b–4(f)(2).

[50] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95300; File No. SR–NASDAQ–2022–040]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain NOM Market Maker Non-Penny Discounts in Options 7, Section 2

July 15, 2022.

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 July 1, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') 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 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 Exchange's Pricing Schedule at Options 7, Section 2(1), which governs pricing for Nasdaq participants using The Nasdaq Options Market (''NOM''), Nasdaq's facility for executing and routing standardized equity and index options.

The text of the proposed rule change is detailed below: proposed new language is underlined and proposed deletions are in brackets.[sic]

* * * * *

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

Pursuant to Options 7, Section 2(1), the Exchange currently assesses NOM Market Makers [3] a $0.35 per contract Fee to Add Liquidity in Non-Penny Symbols. This fee applies unless Participants meet the volume thresholds set forth in note 5. Note 5 currently stipulates that Participants that add NOM Market Maker liquidity in Non-Penny Symbols of 10,000 to 14,999 average daily volume (''ADV'') contracts per day in a month will be assessed a $0.00 per contract Non-Penny Options Fee for Adding Liquidity in that month. Participants that add NOM Market Maker liquidity in Non-Penny Symbols of 15,000 or more ADV contracts per day in a month will receive the Non-Penny Rebate to Add Liquidity (currently $0.30 per contract) for that month instead of paying the Non-Penny Fee for Adding Liquidity. Accordingly, qualifying Participants are offered an opportunity to reduce the $0.35 fee or earn a rebate if they meet the volume-based requirements under note 5.

The Exchange now proposes to replace the current ADV thresholds in note 5 with new thresholds that will be based on a percentage of total industry volume. Specifically, Participants will be eligible for free executions instead of paying the $0.35 per contract fee if they add NOM Market Maker liquidity in Non-Penny Symbols of 0.05% to 0.07% of total industry customer equity and ETF option ADV contracts (''TCV'') per day in a month (currently 10,000 to 14,999 ADV contracts per day in a month). Further, Participants will receive the $0.30 per contract rebate instead of paying the $0.35 per contract fee if they add NOM Market Maker liquidity in Non-Penny Symbols of above 0.07% TCV (currently 15,000 or more ADV contracts) per day in a month. As proposed, note 5 will state:

> The NOM Market Maker Fee for Adding Liquidity in Non-Penny Symbols will apply unless Participants meet the volume thresholds set forth in this note. Participants that add NOM Market Maker liquidity in Non-Penny Symbols of 0.05% to 0.07% of total industry customer equity and ETF option ADV contracts per day in a month will be assessed a $0.00 per contract Non-Penny Options Fee for Adding Liquidity in that month. Participants that add NOM Market Maker liquidity in Non-Penny Symbols of above 0.07% of total industry customer equity and ETF option ADV contracts per day in a month will receive the Non-Penny Rebate to Add Liquidity for that month instead of paying the Non-Penny Fee for Adding Liquidity.

Only the volume requirements for the note 5 incentives will be amended with this proposal, not the related fees or rebates. The Exchange notes that the new volume requirements are more stringent than the current ADV volume requirements.[4] The Exchange is proposing to effectively raise the volume requirements to align with increasing Participant activity on the Exchange over time. While the proposed tiered requirements are more stringent, the Exchange believes that the note 5 incentives will continue to encourage NOM Market Makers to add Non-Penny Symbol liquidity on NOM to the benefit of all market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [7]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [8]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that its proposal to replace the current ADV thresholds in note 5 with the new TCV% thresholds described above is reasonable for the reasons that follow. The Exchange is proposing to base the note 5 incentives on a percentage of industry volume in recognition of the fact that the volume executed by a member may rise or fall with industry volume. A percentage of industry volume calculation allows the Exchange's tiers to be calibrated to current market volumes rather than requiring the same amount of volume regardless of market conditions. While the amount of volume required by the proposed tiers in note 5 may change in any given month due to increases or decreases in industry volume, the Exchange believes that the proposed tier requirements are set at appropriate levels. While the proposed TCV%

[3] The term ''NOM Market Maker'' or (''M'') is a Participant that has registered as a Market Maker on NOM pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

[4] For example, 0.05% TCV is currently representative of approximately 16,150 contracts ADV and 0.07% TCV is currently representative of approximately 22,610 contracts ADV.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[8] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

requirements are more stringent than the current ADV requirements, the Exchange is proposing to effectively raise the volume thresholds in note 5 to align with increased Participant activity over time.[9] Furthermore, the Exchange believes that the more stringent volume requirements will encourage NOM Market Makers to add a greater amount of liquidity on NOM in order to receive the note 5 incentives. The Exchange believes that encouraging additional NOM Market Maker liquidity in this manner would increase overall liquidity and trading opportunities on NOM to the benefit of all market participants.

The Exchange believes that its proposal is equitable and not unfairly discriminatory. As described above, the proposed volume requirements will primarily impact NOM Market Makers that are eligible to receive the note 5 incentives for Non-Penny Symbols. The Exchange, however, anticipates minimal impact with the proposed changes as no NOM Market Maker would fall in or out of the new TCV% tiers as a result of this change. The Exchange further believes that the proposed changes to the volume requirements in note 5 is equitable and not unfairly discriminatory because the Exchange will apply the proposed requirements uniformly to all qualifying NOM Market Makers. The Exchange does not believe that it is unfairly discriminatory to offer the note 5 incentives to only NOM Market Makers because these market participants add value through continuous quoting and the commitment of capital.[10] Because NOM Market Makers have these obligations to the market and regulatory requirements that normally do not apply to other market participants, the Exchange believes that offering the note 5 incentives to only NOM Market Makers is equitable and not unfairly discriminatory in light of their obligations. Finally, encouraging NOM Market Makers to add greater liquidity benefits all market participants in the quality of order interaction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. As discussed above, while the Exchange's proposal targets certain activity on NOM (*i.e.,* NOM Market Makers adding liquidity in Non-Penny Symbols), the proposed changes are ultimately aimed at attracting greater order flow to the Exchange, which benefits all market participants by providing more trading opportunities.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Participants or competing exchanges to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11]

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2022–040 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–NASDAQ–2022–040. 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 Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2022–040 and should be submitted on or before August 11, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–15546 Filed 7–20–22; 8:45 am]

BILLING CODE 8011–01–P

[9] *See supra* note 4.

[10] *See* Options 2, Sections 4 and 5.

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95298; File No. SR–PEARL–2022–29]

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC To Amend the Route to Primary Auction Routing Option Under Exchange Rule 2617(b)(5)(B)

July 15, 2022.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 13, 2022 MIAX PEARL, LLC (''MIAX Pearl'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposed rule change to amend the Route to Primary Auction (''PAC'') routing option under Exchange Rule 2617(b)(5)(B).

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the PAC routing option under Exchange Rule 2617(b)(5)(B) that is available to orders in equity securities traded on the Exchange's equity trading platform (referred to herein as ''MIAX Pearl Equities''). Specifically, the Exchange proposes to amend subparagraph (b)(5)(B)(1)(ii)(b) to provide for the routing of Market Orders[3] entered at or after 3:50 p.m. Eastern Time to the primary listing market's closing process in the event the primary listing market declared a regulatory halt and is to conduct its closing process. The Exchange also proposes to make a clarifying change to Exchange Rule 2617(b)(5)(B) to replace two references to ''primary listing exchange'' with the term ''primary listing market'' to ensure consistent terms are used within the Rule.

The Exchange offers its Equity Members[4] optional routing functionality that allows them to use the Exchange to access liquidity on other trading centers. The functionality includes routing algorithms that determine the destination or pattern of routing. Exchange Rule 2617(b)(5) sets forth that there is a particular pattern of routing to other trading centers, known as the ''System routing table'', as well as sets forth the Exchange's available routing options. All routing is designed to be conducted in a manner consistent with Regulation NMS.

The Exchange recently launched the PAC routing option,[5] which enables an Equity Member to designate that their order be routed to the primary listing market to participate in the primary listing market's opening, re-opening or closing process. In sum, Exchange Rule 2617(b)(5)(B) describes PAC as a routing option for Market Orders and displayed Limit Orders[6] designated with a time-in-force of Regular Hours Only (''RHO'')[7] that the entering firm wishes to designate for participation in the opening, re-opening (following a regulatory halt, suspension, or pause), or closing process of a primary listing market (BZX, the New York Stock Exchange LLC (''NYSE''), Nasdaq, NYSE American LLC (''NYSE American''), or NYSE Arca, Inc. (''NYSE Arca'')) if received before the opening, re-opening, or closing process of such market.

Market Orders and Closing Process

Market Orders coupled with the PAC routing option are currently not eligible for routing to the primary listing market's closing process. Accordingly, Exchange Rule 2617(b)(5)(B)(1)(ii)(b) provides that a Market Order designated as RHO is not eligible to be routed to participate in the primary listing market's closing process.[8] Exchange Rule 2617(b)(5)(B)(1)(ii)(b) further provides that a Market Order designated as RHO received at or after the time the Exchange begins to route existing orders to participate in the primary listing market's closing process, but before market close, will be cancelled.

The Exchange initially understood that Equity Members did not plan to utilize Market Orders to participate in the primary listing market's closing process because they would prefer to enter Limit Orders[9] for purposes of participating in the price discovery process conducted by the primary listing market's closing process.[10] Therefore, the Exchange initially proposed to not accept Market Orders for purposes of routing them to a primary listing market's closing process. However, Equity Members recently expressed interest in having the ability to route Market Orders to participate in the primary listing market's closing process where the primary listing market declares a regulatory halt that extends past 3:50 p.m. Eastern Time. In such case, there is no risk that such

[3] *See* Exchange Rule 2614(a)(2).

[4] The term ''Equity Member'' is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. *See* Exchange Rule 1901.

[5] *See* Securities Exchange Act Release No. 94301 (February 23, 2022), 87 FR 11739 (March 2, 2002) (SR–PEARL–2022–06). *See also MIAX Pearl Equities—Expansion of Functionality Through New Route to Primary Auction (PAC) Strategy—Rollout Postponed until June 27, 2022,* dated June 8, 2022, *available at https://www.miaxoptions.com/alerts/2022/06/08/miax-pearl-equities-expansion-functionality-through-new-route-primary-auction-pac* (last visited June 28, 2022).

[6] *See* Exchange Rule 2614(a)(1).

[7] Exchange Rule 2614(b)(2) defines ''Regular Hours Only'' or ''RHO'' as ''[a]n order that is designated for execution only during Regular Trading Hours, which includes the Opening Process for equity securities. An order with a time-in-force of RHO entered into the System before the opening of business on the Exchange as determined pursuant to Exchange Rule 2600 will be accepted but not eligible for execution until the start of Regular Trading Hours.''

[8] Market Orders coupled with the PAC routing option designated as Immediate-or-Cancel (''IOC'') will be cancelled. *See* Exchange Rule 2617(b)(5)(B)(2)(iv).

[9] *See* Exchange Rule 2614(b).

[10] The Exchange previously represented that it would submit a proposed rule change to route Market Orders to participate in the primary listing market's closing process should Equity Members request such a change. *See* Securities Exchange Act Release No. 94301 at note 23 (February 23, 2022), 87 FR 11739 (March 2, 2002) (SR–PEARL–2022–06)

order would be executed during continuous trading because continuous trading concluded and the primary listing market is to proceed directly to conducting its closing process in accordance with its rules.[11] The Exchange understands Equity Members would welcome the flexibility to route their Market Orders to participate in the primary listing market's closing process in this case.

The Exchange, therefore, proposes to amend Exchange Rule 2617(b)(5)(B)(1)(ii)(b) to provide that a Market Order designated as RHO would continue to not be eligible to be routed to participate in the primary listing market's closing process, unless such Market Order is: (i) entered at or after 3:50 p.m. Eastern Time, but before market close, (ii) the primary listing market has declared a regulatory halt; and (iii) the primary listing market is to conduct its closing process according to its applicable rules.[12] Exchange Rule 2617(b)(5)(B)(1)(ii)(b) would continue to provide that all other Market Orders designated as RHO received at or after the time the Exchange begins to route existing orders to participate in the primary listing market's closing process, but before market close, will be cancelled.

Clarifying Change

The Exchange notes that Exchange Rule 2617(b)(5)(B) used the term ''primary listing market'' through most of Exchange Rule 2617(b)(5)(B). Exchange Rule 2617(b)(5)(B) only uses the term ''primary listing exchange'' in two areas, subparagraphs (b)(5)(B)(1)(ii)(a) and (b). The Exchange proposes to make a clarifying change to Exchange Rule 2617(b)(5)(B) to replace these two references to ''primary listing exchange'' with ''primary listing market'' to ensure consistent terms are used within the Rule. These change would not amend the meaning of Exchange Rule 2617(b)(5)(B)(1)(ii)(a) and (b). They are simply intended to ensure consistent terminology is used throughout the description of the PAC routing option in Exchange Rule 2617(b)(5)(B) and avoid potential confusion.

Implementation

Due to the technological changes associated with this proposed change, the Exchange will issue a trading alert publicly announcing the implementation date of this proposed rule change to provide Equity Members with adequate time to prepare for the associated technological changes. The Exchange anticipates that the implementation date will be in either the fourth quarter of 2022 or first quarter of 2023.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5),[14] in particular, because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change would remove impediments to a free and open market and promote just and equitable principles of trade because it would provide market participants with the ability to route Market Orders to participate directly in the primary listing market's closing process opening up another source of liquidity to Market Orders entered on the MIAX Pearl Equities. The Exchange only proposes to route Market Orders to participate in the primary listing market's closing process that are entered at or after 3:50 p.m. Eastern Time, but before market close, and the primary listing market declared a regulatory halt and is to conduct its closing process according to their applicable rules. The Exchange proposes to only route Market Orders in this discrete scenario because it is consistent with Equity Members' expectation that such Market Orders participate directly in the primary market's closing process only and not be subject to market risk because continuous trading in the security would be halted.

The proposed change to the PAC routing option would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide Equity Members the option to route their Market Orders to an additional source of liquidity, potentially benefiting from improved execution prices and a more efficient marketplace. Therefore, the Exchange believes the proposed rule change would provide Equity Members with greater control and flexibility over the routing of their Market Orders, thereby facilitating transactions in securities and perfecting the mechanism of the national market system. The Exchange also notes that use of the PAC routing option, including routing Market Order to participate in the primary listing market's closing process, is completely voluntary and no Equity Member is required to route orders through the Exchange and may choose other methods to access liquidity on other trading centers.

The proposal would not impede the national market system because it is not designed to disrupt the ability of the primary listing market to conduct their closing processes. The proposed rule change is similar to existing routing options already provided by other equity exchanges,[15] which the Exchange understands have not disrupted the primary listing market's ability to conduct their closing process. The proposed rule change would simply provide Equity Members with another means to route Market Orders to participate in the primary listing market's closing process. The primary listing markets are free to reject or cancel such orders should they deem them to be inconsistent with their applicable rules.

Finally, the proposed clarification to Exchange Rule 2617(b)(5)(B) to replace two references to ''primary listing exchange'' with the term ''primary listing market'' promotes just and equitable principles of trade and protects investors and the public interest because it ensures consistent terminology is used within the Exchange's Rules, thereby avoiding potential investor confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that expanding its PAC routing option to route Market Orders entered at or after 3:50 p.m.

[11] *See, e.g.,* NYSE Rule 7.35(d), Openings and Reopenings in Last Ten Minutes of Trading; BZX Rule 11.23(d)(2)(c), Incremental Quote Period Extensions for Halt Auctions Following a Regulatory Halt; *and* Nasdaq Rules 1420(a)(12)(H), Re-opening of Trading Following a Trading Pause, *and* 4754(b)(6), LULD Closing Cross Following Limit-Up-Limit-Down Trading Pause.

[12] The Exchange notes that any shares that remain unexecuted after routing will be cancelled in accordance with the Market Order's RHO time-in-force instruction.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* Cboe BZX Exchange, Inc. (''BZX'') Rule 11.13(b)(3)(N) (describing the ROOC routing option and not prohibiting market orders from routing to the primary listing market's closing process), Cboe EDGX Exchange, Inc. (''EDGX'') Rule 11.11(g)(8) (describing the ROOC routing option and not prohibiting market orders from routing to the primary listing market's closing process), *and* The Nasdaq Stock Market LLC (''Nasdaq'') Rule 4758(a)(1)(A)(x) (describing the LIST routing option and not prohibiting market orders from routing to the primary listing market's closing process).

Eastern Time to participate in the primary listing market's closing process where a regulatory halt is declared may have a positive effect on competition because it would allow the Exchange to offer functionality similar to that offered by BZX, EDGX, and Nasdaq.[16] The Exchange believes that its proposal promotes competition because it is designed to attract liquidity to the Exchange by providing market participants with additional routing functionality.

The Exchange believes that the proposal will not impose any burden on inter-market competition, but rather promote competition by enhancing the value of the Exchange's PAC routing option. However, since the use of the Exchange's PAC routing option is voluntary and Equity Members have numerous alternative mechanisms for order routing, the changes will not impair the ability of Equity Members to use other means to access the primary listing market's closing process. The proposed rule change would improve inter-market competition because it allows the Exchange to provide another means by which market participants would be able route Market Orders to participate in the primary listing market's closing processes that the Exchange believes is similar to that currently provided by other exchanges.[17]

The Exchange also believes that the proposal will not impose any burden on intra-market competition because it would be available to all Equity Members. Any Equity Member that seeks to have their Market Order routed to participate in the primary listing market's closing process in the above proposed scenario is free to select the PAC routing option or seek to access those markets through other means.

Finally, the proposed clarification to Exchange Rule 2617(b)(5(B) will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it also does not enhance the Exchange's competitive position. Rather, it is simply intended to ensure consistent terminology is used in the Exchange's Rules.

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.

[16] *Id.*

[17] *Id.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [18] and Rule 19–b4(f)(6) [19] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2022–29 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–PEARL–2022–29. 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 Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2022–29 and should be submitted on or before August 11, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–15544 Filed 7–20–22; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95294; File No. SR–OCC–2022–801]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice Concerning the Options Clearing Corporation's Margin Methodology for Incorporating Variations in Implied Volatility

July 15, 2022.

I. Introduction

On January 24, 2022, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–OCC–2022–801 (''Advance Notice'') pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010

(''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) [2] under the Securities Exchange Act of 1934 (''Exchange Act'') [3] to change quantitative models related to certain volatility products.[4] The Advance Notice was published for public comment in the **Federal Register** on February 11, 2022,[5] and the Commission has received comments regarding the changes proposed in the Advance Notice.[6]

On March 24, 2022, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,[7] the Commission extended the review period for the Advance Notice for an additional 60 days because the Commission found the issues raised by the Advance Notice to be complex.[8] Notice of the extension was published in the **Federal Register** on March 30, 2022.[9]

On May 24, 2022, the Commission requested additional information for consideration of the Advance Notice from OCC, pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act,[10] which tolled the Commission's period of review of the Advance Notices until 120 days from the date the information required by the Commission was received by the Commission.[11] On June 22, 2022, the Commission received OCC's response to the Commission's request for additional information.[12] The Commission is hereby providing notice of no objection to the Advance Notice.

II. Background [13]

The System for Theoretical Analysis and Numerical Simulations (''STANS'') is OCC's methodology for calculating margin.[14] STANS includes econometric models that incorporate a number of risk factors. OCC defines a risk factor in STANS as a product or attribute whose historical data is used to estimate and simulate the risk for an associated product. The majority of risk factors utilized in STANS are the returns on individual equity securities; however, a number of other risk factors may be considered, including, among other things, returns on implied volatility.[15]

OCC's STANS Methodology Description includes subsections on (i) implied volatility risk factors to measure the expected future volatility of an option's underlying security at expiration, (ii) a synthetic futures model to price specified products such as volatility index-based futures, and (iii) a specialized factor model to price variance futures.[16] As described below, and in more detail in the Notice of Filing, OCC proposes the following changes:

(1) implement a new model for incorporating variations in implied volatility within STANS for products based on the S&P 500 Index (such index hereinafter referred to as ''S&P 500'' and such proposed model being the ''S&P 500 Implied Volatility Simulation Model'');

(2) implement a new model to calculate the theoretical values of futures on indexes designed to measure volatilities implied by prices of options on a particular underlying index (such indexes being ''Volatility Indexes''; futures contracts on such Volatility Indexes being ''Volatility Index Futures''; and such proposed model being the ''Volatility Index Futures Model''); and

(3) replace OCC's model to calculate the theoretical values of exchange-traded futures contracts based on the expected realized variance of an underlying interest (such contracts being ''Variance Futures,'' and such model being the ''Variance Futures Model'').

A. S&P 500 Implied Volatility Simulation Model

OCC considers variations in implied volatility within STANS to ensure that the anticipated cost of liquidating options positions in an account recognizes the possibility that implied volatility could change during the two-business day liquidation time horizon and lead to corresponding changes in the market prices of the options. OCC relies on its Implied Volatilities Scenarios Model to simulate the variations in implied volatility that OCC uses to re-price options within STANS for substantially all option contracts [17] available to be cleared by OCC that have a residual tenor [18] of less than three years. As noted above, OCC now proposes to implement a new model, the S&P 500 Implied Volatility Simulation Model, for incorporating

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[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] *See* Notice of Filing *infra* note 5, at 87 FR 8063.

[5] Securities Exchange Act Release No. 94166 (Feb. 7, 2022), 87 FR 8063 (Feb. 11, 2022) (File No. SR–OCC–2022–801) (''Notice of Filing''). On January 24, 2022, OCC also filed a related proposed rule change (SR–OCC–2022–001) with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder (''Proposed Rule Change''). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. In the Proposed Rule Change, which was published in the **Federal Register** on February 11, 2022, OCC seeks approval of proposed changes to its rules necessary to implement the Advance Notice. Securities Exchange Act Release No. 94165 (Feb. 7, 2022), 87 FR 8072 (Feb. 11, 2022) (File No. SR–OCC–2022–001). The initial comment period for the related Proposed Rule Change filing closed on March 4, 2022. The Commission solicited further comment when it subsequently instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change. The additional comment period closed on June 22, 2022. *See* Securities Exchange Act Release No. 94900 (May 12, 2022), 87 FR 30284 (May 18, 2022) (File No. SR–OCC–2022–001).

[6] Comments on the Advance Notice are available at *https://www.sec.gov/comments/sr-occ-2022-801/srocc2022801.htm.* Since the proposal contained in the Advance Notice was also filed as a proposed rule change, all public comments received on the proposal are considered regardless of whether the comments are submitted on the Proposed Rule Change or the Advance Notice. Comments on the Proposed Rule Change are available at *https://www.sec.gov/comments/sr-occ-2022-001/srocc2022001.htm.*

[7] 12 U.S.C. 5465(e)(1)(H).

[8] *See* Securities Exchange Act Release No. 94504 (Mar. 24, 2022), 87 FR 18414 (Mar. 30, 2022) (File No. SR–OCC–2022–801).

[9] *Id.*

[10] 12 U.S.C. 5465(e)(1)(D).

[11] *See* 12 U.S.C. 5465(e)(1)(E)(ii) and (G)(ii); Memorandum from the Office of Clearance and Settlement Supervision, Division of Trading and Markets, titled ''Commission's Request for Additional Information,'' *available at https://www.sec.gov/comments/sr-occ-2022-801/srocc2022801-20129507-295740.pdf.*

[12] *See* 12 U.S.C. 5465(e)(1)(E)(ii) and (G)(ii); Memorandum from the Office of Clearance and Settlement Supervision, Division of Trading and Markets, titled ''Response to the Commission's Request for Additional Information,'' *available at https://www.sec.gov/comments/sr-occ-2022-801/srocc2022801-20132694-303185.pdf.*

[13] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at *https://www.theocc.com/about/publications/bylaws.jsp.*

[14] In February 2021, the Commission approved a proposed rule change by OCC to adopt a new document describing OCC's system for calculating daily and intraday margin requirements for its Clearing Members (the ''STANS Methodology Description''). *See* Securities Exchange Release No. 91079 (Feb. 8, 2021), 86 FR 9410 (Feb. 12, 2021) (File No. SR–OCC–2020–016) (''STANS Methodology Approval'').

[15] Using the Black-Scholes options pricing model, the implied volatility is the standard deviation of the underlying asset price necessary to arrive at the market price of an option of a given strike, time to maturity, underlying asset price and the current risk-free rate. In December 2015, the Commission approved a proposed rule change and issued a Notice of No Objection to an advance notice filing by OCC to modify its margin methodology by more broadly incorporating variations in implied volatility within STANS. *See* Securities Exchange Act Release No. 76781 (Dec. 28, 2015), 81 FR 135 (Jan. 4, 2016) (File No. SR–OCC–2015–016) and Securities Exchange Act Release No. 76548 (Dec. 3, 2015), 80 FR 76602 (Dec. 9, 2015) (File No. SR–OCC–2015–804). In December 2018, the Commission approved a proposed rule change and issued a Notice of No Objection to an advance notice filing by OCC to introduce an exponentially weighted moving average for the daily forecasted volatility of implied volatility risk factors in STANS. *See* Securities Exchange Act Release No. 84879 (Dec. 20, 2018), 83 FR 67392 (Dec. 28, 2018) (File No. SR–OCC–2018–014) and Securities Exchange Act Release No. 84838 (Dec. 18, 2018), 83 FR 66791 (Dec. 27, 2018) (File No. SR–OCC–2018–804).

[16] *See* STANS Methodology Approval, 86 FR at 9411.

[17] OCC's Implied Volatilities Scenarios Model excludes: (i) binary options, (ii) options on commodity futures, (iii) options on U.S. Treasury securities, and (iv) Asians and Cliquets.

[18] The ''tenor'' of an option is the amount of time remaining to its expiration.

variations in implied volatility within STANS for products based on the S&P 500 Index.

In the Notice of Filing, OCC stated that its current Implied Volatilities Scenarios Model is subject to certain limitations and issues.[19] Such issues relate to (1) volatility of volatility forecasting; (2) volatility surface discontinuities; and (3) arbitrage constraints and cross-product offsets. OCC proposes to replace the current Implied Volatilities Scenarios Model for the S&P 500 product group with the proposed S&P 500 Implied Volatility Simulation Model to address such limitations, which are described below. OCC would continue to use the current Implied Volatilities Scenarios Model for the products other than S&P 500-based products.[20]

Volatility of volatility forecasting. In the current Implied Volatilities Scenarios Model, OCC uses a GARCH model [21] to forecast the volatility of implied volatility risk factors.[22] OCC's past analysis has demonstrated that the volatility changes forecasted by the GARCH model were extremely sensitive to sudden spikes in volatility, which at times resulted in margin requirements that OCC believes were unreasonable.[23] OCC's current Implied Volatilities Scenarios Model relies on an exponentially weighted moving average [24] of forecasted volatilities over a specified look-back period to reduce the model's sensitivity to large, sudden shocks in market volatility. OCC stated that reliance on an exponentially weighted moving average reduces and delays the impact of large implied volatility spikes, but that it does so in an artificial way that does not target the limitations and issues with the model noted above.[25]

In the proposed S&P 500 Implied Volatility Simulation Model, OCC would forecast volatility for S&P 500 1-month at-the-money (''ATM'') implied volatility based on the 30-day VVIX, Cboe's option-implied volatility-of-volatility index. OCC would further smooth the daily 30-day VVIX to control for procyclicality. OCC asserted that, based on a performance analysis, the proposed S&P 500 Implied Volatility Simulation Model would (1) provide adequate margin coverages for both upward and downward movements of implied volatility over the margin risk horizon; and (2) remain stable across both time and low, medium, and high volatility market conditions.[26]

Volatility surface discontinuities. The current Implied Volatilities Scenarios Model relies on a ''nearest neighbor'' method to map the implied volatility surface between reference points.[27] The reliance on a nearest neighbor method introduces discontinuity in the implied volatility curve for a given tenor. Further, the current Implied Volatilities Scenarios Model's use of arithmetic implied volatility returns can result in near-zero implied volatility in simulated scenarios, which OCC states is unrealistic.[28] Additionally, the current model includes implied volatility scenarios for call and put options with the same tenor and strike price that are not equal, which contributes to inconsistencies in the implied volatility scenarios. OCC now proposes to model the implied volatility surface directly to generate a surface that would be smooth and continuous in both term structure and moneyness [29] dimensions.[30] Modeling the implied volatility surface directly rather than mapping the surface based on a series of reference points would simplify OCC's margin methodology and help avoid the discontinuities discussed above.

Arbitrage constraints and cross-product offsets. The current Implied Volatilities Scenarios Model does not impose constraints to ensure that simulated surfaces are arbitrage-free. Because of this potential for arbitrage, OCC believes the implied volatilities are not adequate inputs to price Variance Futures and Volatility Index Futures accurately, both of which assume an arbitrage-free condition.[31] Further, the current Implied Volatilities Scenarios Model may not provide natural offsetting of risks in Clearing Member accounts that contain combinations of S&P 500 options, variance futures, and/or volatility index futures because OCC models such options and futures independent of each other rather than as inherently related components of a broader system, which could in turn result in unnecessarily large margin requirements for certain Clearing Members.

Under the proposed model, put and call options with the same tenors and strike prices would have the same implied volatility scenarios. Imposing such a constraint on arbitrage would be sufficient to allow OCC to use the output of the proposed model for margining volatility index futures and variance futures.[32] Use of the proposed S&P 500 Implied Volatility Simulation Model as an input to margining volatility index futures and variance futures also would, in turn, support margin offsets between S&P 500 options, VIX futures, and S&P 500 variance futures.

B. Volatility Index Futures Model

To calculate margin for Clearing Member portfolios, OCC currently relies on its ''Synthetic Futures Model'' to calculate the theoretical value of volatility index futures, among other products.[33] As noted above, OCC now

[19] *See* Notice of Filing, 87 FR at 8065.

[20] *See* Notice of Filing, 87 FR at 8066, n. 32.

[21] The acronym ''GARCH'' refers to an econometric model that can be used to estimate volatility based on historical data. *See generally* Tim Bollerslev, ''Generalized Autoregressive Conditional Heteroskedasticity,'' *Journal of Econometrics,* 31(3), 307–327 (1986).

[22] *See* Notice of Filing, 87 FR at 8064.

[23] *See* Notice of Filing, 87 FR at 8065.

[24] An exponentially weighted moving average is a statistical method that averages data in a way that gives more weight to the most recent observations using an exponential scheme. As noted above, OCC introduced an exponentially weighted moving average for the daily forecasted volatility of implied volatility risk factors in STANS in 2018. *See supra* note 15. OCC found that using unweighted daily forecasted volatilities of implied volatilities caused jumps in aggregate margin requirements of up to 80 percent overnight, which OCC believes were unreasonable. *See* Securities Exchange Act Release No. 84879 (Dec. 20, 2018), 83 FR 67392, 67393 (Dec. 28, 2018) (File No. SR–OCC–2018–014) and Securities Exchange Act Release No. 84838 (Dec. 18, 2018), 83 FR 66791, 66792 (Dec. 27, 2018) (File No. SR–OCC–2018–804).

[25] *See* Notice of Filing, 87 FR at 8065.

[26] *See* Notice of Filing, 87 FR at 8068.

[27] The Implied Volatilities Scenarios Model models a volatility surface by incorporating nine risk factors based on a range of tenors and option deltas. The ''delta'' of an option represents the sensitivity of the option price to the price of the underlying security.

[28] *See* Notice of Filing, 87 FR at 8065.

[29] The term ''moneyness'' refers to the relationship between the current market price of the underlying interest and the exercise price. *See* Notice of Filing, 87 FR at 8064, n. 13.

[30] Key risk factors driving the implied volatility surface are explicitly modeled within the model itself. *See* Notice of Filing, 87 FR at 8067.

[31] *See* Notice of Filing, 87 FR at 8065.

[32] *See* Notice of Filing, 87 FR at 8068. OCC intends to rely on the output from the proposed S&P 500 Implied Volatility Simulation Model as an input to the proposed Volatility Index Futures Model and Variance Futures Model described below. *See* Notice of Filing, 87 FR at 8067.

[33] *See* Securities Exchange Act Release No. 85873 (May 16, 2019), 84 FR 23620 (May 22, 2019) (File No. SR–OCC–2019–002) (approving a proposed rule change regarding the measurement of volatilities implied by prices of options on a particular underlying interest). OCC also applies the Synthetic Futures Model to (i) futures on the American Interbank Offered Rate (''AMERIBOR''); (ii) futures products linked to indexes comprised of continuous yield based on the most recently issued (*i.e.,* ''on-the-run'') U.S. Treasury notes listed by Small Exchange Inc. (''Small Treasury Yield Index Futures''); and (iii) futures products linked to Light Sweet Crude Oil (WTI) listed by Small Exchange (''Small Crude Oil Futures''). *See* Securities Exchange Act Release No. 89392 (Jul. 24, 2020), 85 FR 45938 (Jul. 30, 2020) (File No. SR–OCC–2020–007) (application of OCC's Synthetic Futures model to AMERIBOR futures); Securities Exchange Act Release No. 90139 (Oct. 8, 2020), 85 FR 65886 (Oct. 16, 2020) (File No. SR–OCC–2020–012) (application

Continued

proposes to implement its new Volatility Index Futures model, which would be used to calculate the theoretical values of futures on certain volatility futures indexes (*i.e.,* indexes designed to measure volatilities implied by prices of options on a particular underlying index).[34]

In the Notice of Filing, OCC stated that its current Synthetic Futures Model is subject to certain limitations and issues.[35] First, the current Synthetic Futures Model relies on a GARCH variance forecast that, as noted above, is sensitive to large volatility shocks. OCC mitigates this sensitivity by imposing a floor for variance estimates based on the underlying index (*e.g.,* VIX). The proposed Volatility Index Futures Model would instead rely on a direct link between the volatility index futures price and the underlying S&P 500 options price to mitigate the model's sensitivity to large volatility shocks. Such a link would come from reliance on the output of the proposed S&P 500 Implied Volatility Simulation Model, which does not rely on a GARCH process and, therefore, the input to the proposed Volatility Index Futures Model would not have the same sensitivity to large volatility shocks as the current Synthetic Futures Model.

Second, the current Synthetic Futures Model makes the rolling volatility futures contracts take on different variances from calibration at futures roll dates, which could translate to jumps in margin. The proposed Volatility Index Futures Model would be based on an entirely different approach that would not incorporate the same potential jumps in margin. Specifically, OCC proposes to adopt a parameter-free approach based on the replication of log-contract, which measures the expected realized volatility using S&P 500 options, as discussed in Cboe's VIX white paper.[36]

As described in the confidential exhibits OCC submitted with the Advance Notice, the proposed Volatility Index Futures Model would provide more consistent margin coverage across the term structure when compared to the current Synthetic Futures Model. Based on OCC's testing, the proposed model would continue to provide adequate margin coverage during periods of low and high volatility as well as for short-term futures. Further, the proposed model would provide for more efficient margin coverage for VIX futures portfolios hedged with S&P 500 options.

C. Variance Futures Model

Variance futures are commodity futures for which the underlying interest is a variance. OCC's current model for calculating the theoretical value of variance futures, adopted in 2007, is an econometric model designed to capture long- and short-term conditional variance of the underlying S&P 500 to generate variance futures prices. OCC now proposes to replace its current model for margining variance futures with the proposed Variance Futures Model, which would be based on a replication technique using the log-contract to price variance futures similar to the proposed Volatility Index Futures Model.[37]

OCC believes that its current model for margining variance futures has several disadvantages.[38] First, OCC currently models variance futures by simulating a final settlement price rather than a near-term variance futures price, which is not consistent with OCC's two-day liquidation horizon.[39] The proposed Variance Futures Model would simulate a near-term variance futures price rather than a final settlement price, consistent with OCC's two-day liquidation assumption.

Second, similar to the Implied Volatilities Scenarios Model and Synthetic Futures Model, OCC's current model for margining variance futures relies on a GARCH model that OCC believes: (1) does not provide appropriate risk offsets with other instruments inherently related to the S&P 500 implied volatility and (2) does not generate margin requirements that are sufficiently conservative for short positions and aggressive for long positions to avoid causing model backtesting failures.[40]

Instead of relying on a GARCH variance forecast, the proposed Variance Futures Model would approximate the implied component of variance futures (*i.e.,* the unrealized variance) based on option prices generated using the proposed S&P 500 Implied Volatility Simulation Model. As described in the confidential exhibits OCC submitted with the Advance Notice, this would significantly reduce long-side coverage exceedances relative to the current model while maintaining coverage for periods of low and high volatility. It would also offer offsets for variance futures with the options of the same underlying security.

III. Discussion and Notice of No Objection

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for SIFMUs and strengthening the liquidity of SIFMUs.[41]

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe regulations containing risk management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency.[42] Section 805(b) of the Clearing Supervision Act provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):[43]

- to promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk management standards may address such areas as risk management and default policies and procedures, among other areas.[44]

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the ''Clearing Agency Rules'').[45] The Clearing Agency Rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies

of OCC's Synthetic Futures model to Small Treasury Yield Index Futures); Securities Exchange Act Release No. 91833 (May 10, 2021), 86 FR 26586 (May 14, 2021) (File No. SR–OCC–2021–005) (application of OCC's Synthetic Futures model to Small Crude Oil Futures).

[34] OCC would continue to use the current Synthetic Futures Model to model prices for interest rate futures on AMERIBOR, Small Treasury Yield Index Futures and Small Crude Oil Futures. *See* Notice of Filing, 87 FR at 8065, n. 26.

[35] *See* Notice of Filing, 87 FR at 8066.

[36] *See* Cboe, *VIX White Paper* (2019), *available at https://www.cboe.com/micro/vix/vixwhite.pdf.*

[37] This approach is based on Cboe's published method for pricing S&P 500 variance futures. *See* Cboe, *S&P 500 Variance Futures Contract Specification* (Dec. 10, 2012), *available at http://www.cboe.com/products/futures/va-s-p-500-variance-futures/contract-specifications.*

[38] *See* Notice of Filing, 87 FR at 8066.

[39] OCC's processes for managing the default of a Clearing Member assume that OCC can close out the defaulter's portfolio within two days of default.

[40] *See* Notice of Filing, 87 FR at 8066.

[41] *See* 12 U.S.C. 5461(b).

[42] 12 U.S.C. 5464(a)(2).

[43] 12 U.S.C. 5464(b).

[44] 12 U.S.C. 5464(c).

[45] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release No. 68080 (Oct. 22, 2012), 77 FR 66220 (Nov. 2, 2012) (S7–08–11). *See also* Covered Clearing Agency Standards, 81 FR 70786. OCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5).

and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk management practices on an ongoing basis.[46] As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission believes the changes proposed in the Advance Notice are consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,[47] and in the Clearing Agency Rules, in particular Rule 17Ad–22(e)(6).[48]

A. Consistency With Section 805(b) of the Clearing Supervision Act

The Commission believes that the proposal contained in OCC's Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act. Specifically, as discussed below, the Commission believes that the changes proposed in the Advance Notice are consistent with promoting robust risk management, promoting safety and soundness, reducing systemic risks, and supporting the stability of the broader financial system.[49]

The Commission believes that the Advance Notice is consistent with promoting robust risk management as well as safety and soundness because, based on the confidential information provided by OCC and reviewed by the Commission, the proposed models provide for margin coverage levels that are consistent with, and in certain instances (*e.g.,* long-side variance futures coverage) better than, the current models. The proposed models would also simplify OCC's methodology for simulating variations in implied volatilities while simultaneously supporting offsets for products with the same underlying (*e.g.,* volatility and variance products based on the S&P 500). The Commission believes that providing for such offsets would more accurately represent the relationship between the products OCC clears. Ensuring that OCC's margin models accurately reflect the relationships between the products OCC clears would, in turn, facilitate OCC's ability to set margins that more accurately reflect the risks posed by such products. Additionally, providing for such offsets could reduce the likelihood that Clearing Members would be required to provide additional financial resources unnecessarily, which, in turn, could reduce the strain on such members during stress market conditions.

Further, the Commission believes that, to the extent the proposed changes are consistent with promoting OCC's safety and soundness, they are also consistent with supporting the stability of the broader financial system. OCC has been designated as a SIFMU, in part, because its failure or disruption could increase the risk of significant liquidity or credit problems spreading among financial institutions or markets.[50] The Commission believes that the proposed changes would support OCC's ability to continue providing services to the options markets by addressing losses and shortfalls arising out of the default of a Clearing Member. OCC's continued operations would, in turn, help support the stability of the financial system by reducing the risk of significant liquidity or credit problems spreading among market participants that rely on OCC's central role in the options market.

Accordingly, and for the reasons stated above, the Commission believes the changes proposed in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.[51]

B. Consistency With Rule 17Ad–22(e)(6) Under the Exchange Act

Rule 17Ad–22(e)(6)(i) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, among other things, (1) considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market[52] and (2) calculates sufficient margin to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default.[53]

As described above, the proposed models would remove the reliance on GARCH models that have demonstrated extreme sensitivity to sudden spikes in volatility. The Commission believes that such reactivity can produce instability and in certain instances over or underestimation of margin requirements.[54] The proposed models would also replace the modeling techniques that currently allow for discontinuities and jumps in margin (*e.g.,* simulating scenarios with near-zero implied volatility). Such discontinuities and jumps in margin may, in turn, lead to disparate margin requirements for instruments with similar risk profiles. Further, OCC's proposed reliance on output from the proposed S&P 500 Implied Volatility Simulation Model as an input to the Volatility Index Futures model and Variance Futures model would capture the natural risk offsets between inherently related products. Providing for such offsets would more accurately represent the relationship between the products OCC clears. Ensuring that OCC's margin models accurately reflect the relationships between the products OCC clears would, in turn, facilitate OCC's ability to set margins that more accurately reflect the risks posed by such products. Further, providing for such offsets could reduce the likelihood that Clearing Members would be required to provide additional financial resources unnecessarily, which, in turn, could reduce the strain on such members during stress market conditions. Additionally, the proposed Variance Futures model would simulate a near-term variance futures price rather than a final settlement price, which is consistent with the risks OCC would face in the event of a Clearing Member default.

In response to the Notice of Filing,[55] the Commission received a comment opposing the proposal on the basis that the change would reduce margins to a level that could ensure some Clearing Members would fail, with expenses borne by ''direct investors.'' [56] The

[46] 17 CFR 240.17Ad–22.

[47] 12 U.S.C. 5464(b).

[48] 17 CFR 240.17Ad–22(e)(6).

[49] 12 U.S.C. 5464(b).

[50] *See* Financial Stability Oversight Council (''FSOC'') 2012 Annual Report, Appendix A, *https://home.treasury.gov/system/files/261/here.pdf* (last visited Feb. 17, 2022).

[51] 12 U.S.C. 5464(b).

[52] 17 CFR 240.17Ad–22(e)(6)(i).

[53] 17 CFR 240.17Ad–22(e)(6)(iii).

[54] For example, OCC's current model would have increased aggregate margin requirements by 80 percent overnight in response to the increased volatility observed on February 5, 2018. *See* Securities Exchange Act Release No. 84879 (Dec. 20, 2018), 83 FR 67392, 67393 (Dec. 28, 2018).

[55] *See* Notice of Filing, at 87 FR 8063.

[56] Comment from Mary (Feb. 7, 2022), *available at https://www.sec.gov/comments/sr-occ-2022-001/srocc2022001-20114809-267072.htm.* The commenter also raised a concern regarding the confidentiality of certain exhibits. *Id.* OCC asserted that the exhibits to the filing were entitled to confidential treatment because they contained commercial and financial information that is not customarily released to the public and is treated as the private information of OCC. Under Section 23(a)(3) of the Exchange Act, the Commission is not required to make public statements filed with the Commission in connection with a proposed rule change of a self-regulatory organization if the Commission could withhold the statements from the public in accordance with the Freedom of

Continued

commenter's assertions, however, are inconsistent with the confidential performance data provided by OCC. The confidential information provided by OCC includes backtesting data demonstrating how the proposed models would have performed had they been in production at OCC from February 2018 through February 2021. This backtesting period includes the period of increased volatility observed on February 5, 2018 that demonstrated the reactivity of OCC's current models.[57] The confidential information provided by OCC and reviewed by the Commission demonstrates that, overall, the proposed models perform better than OCC's current models with regard to setting margin requirements to cover exposures presented by Clearing Member portfolios.[58]

Accordingly, the Commission believes that the proposed model changes are consistent with Rule 17Ad–22(e)(6) under the Exchange Act.[59]

IV. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission *does not object* to Advance Notice (SR–OCC–2022–801) and that OCC is *authorized* to implement the proposed change as of the date of this notice or the date of an order by the Commission approving proposed rule change SR–OCC–2022–001, whichever is later.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–15525 Filed 7–20–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95295; File No. SR–CboeEDGX–2022–031]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Current Pilot Program Related to EDGX Rule 11.15, Clearly Erroneous Executions, to the Close of Business on October 20, 2022

July 15, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 14, 2022, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to extend the current pilot program related to EDGX Rule 11.15, Clearly Erroneous Executions, to the close of business on October 20, 2022. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions to the close of business on October 20, 2022. Portions of Rule 11.15, explained in further detail below, are currently operating as a pilot program set to expire on July 20, 2022.[5]

On September 10, 2010, the Commission approved, on a pilot basis, changes to EDGX Rule 11.15 that, among other things: (i) provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[6] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[7] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in

Information Act (''FOIA''), 5 U.S.C. 552. 15 U.S.C. 78w(a)(3). The Commission has reviewed the documents for which OCC requests confidential treatment and concludes that they could be withheld from the public under the FOIA. FOIA Exemption 4 protects confidential commercial or financial information. 5 U.S.C. 552(b)(4). Under Exemption 4, information is confidential if it ''is both customarily and actually treated as private by its owner and provided to government under an assurance of privacy.'' *Food Marketing Institute* v. *Argus Leader Media,* 139 S. Ct. 2356, 2366 (2019). In its requests for confidential treatment, OCC stated that it has not disclosed the confidential exhibits to the public, and the information is the type that would not customarily be disclosed to the public. In addition, by requesting confidential treatment, OCC had an assurance of privacy because the Commission generally protects information that can be withheld under Exemption 4. Thus, the Commission has determined to accord confidential treatment to the confidential exhibits.

[57] *See supra* footnote 54.

[58] The Commission received other comments generally asserting that the proposal would reduce margin at the expense of retail investors and that there is a need to ''lower the amount of leverage in the system.'' As described above, the backtesting data provided by OCC demonstrates that the proposed models would set margin requirements that more effectively cover exposures presented by Clearing Member portfolios, which include customer positions.

[59] 17 CFR 240.17Ad–22(e)(6).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 94750 (April 19, 2022), 86 FR 58368 (April 25, 2022) (SR–CboeEDGX–2022–024).

[6] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGX–2010–03).

[7] *See* Securities Exchange Act Release No. 68814 (February 1, 2013), 78 FR 9086 (February 7, 2013) (SR–EDGX–2013–06).

connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[8]

On December 26, 2018, the Commission published the proposed Eighteenth Amendment[9] to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'')[10] to allow the Plan to operate on a permanent, rather than pilot, basis. On April 8, 2019, the Exchange amended EDGX Rule 11.15 to untie the pilot program's effectiveness from that of the Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019 in order allow the Exchange and other national securities exchanges additional time to consider further amendments, if any, to the clearly erroneous execution rules in light of the proposed Eighteenth Amendment to the Plan.[11] On April 17, 2019, the Commission published an approval of the Eighteenth Amendment to allow the Plan to operate on a permanent, rather than pilot, basis.[12] On October 21, 2019, the Exchange amended EDGX Rule 11.15 to extend the pilot's effectiveness to the close of business on April 20, 2020.[13] On March 18, 2020, the Exchange amended EDGX Rule 11.15 to extend the pilot's effectiveness to the close of business on October 20, 2020.[14] On October 20, 2020, the Exchange amended EDGX Rule 11.15 to extend the pilot's effectiveness to the close of business on April 20, 2021.[15] On April 14, 2021 the Exchange amended EDGX Rule 11.15 to extend the pilot's effectiveness to the close of business on October 20, 2021.[16] On October 15, 2021 the Exchange amended EDGX Rule 11.15 to extend the pilot's effectiveness to the close of business on April 20, 2022.[17] Finally, on April 19, 2022, the Exchanged amended EDGA Rule 11.15 to extend the pilot's effectiveness to the close of business on July 20, 2022.[18]

Other self-regulatory organizations (''SROs''), including the Exchange, have worked on a proposed rule change to make the pilot rules permanent. Cboe BZX Exchange, Inc., (''BZX'') filed such a proposed rule change on March 7, 2022.[19] On June 8, 2022, BZX withdrew the proposed rule change.[20] The Exchange now proposes to amend EDGX Rule 11.15 to extend the pilot's effectiveness an additional three months to the close of business on October 20, 2022, while the Commission considers the BZX proposal. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') have filed or plan to file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to EDGX Rule 11.15. The Exchange does not propose any additional changes to EDGX Rule 11.15. The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a limited three month pilot basis.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[21] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[22] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[23] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that extending the clearly erroneous execution pilot under EDGX Rule 11.15 for an additional three months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and the other national securities exchanges consider and develop a permanent proposal for clearly erroneous execution reviews.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange understands that FINRA and other national securities exchanges have or will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments were solicited or received on the proposed rule change.

[8] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–EDGX–2014–12).

[9] *See* Securities Exchange Act Release No. 84843 (December 18, 2018), 83 FR 66464 (December 26, 2018) (File No. 4–631) (''Eighteenth Amendment'').

[10] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[11] *See* Securities Exchange Act Release No. 87364 (April 10, 2019), 84 FR 15652 (April 16, 2019) (SR–CboeEDGX–2019–018).

[12] *See* Securities Exchange Act Release No. 85623 (Apr. 11, 2019), 84 FR 16086 (Apr. 17, 2019) (File No. 4–631).

[13] *See* Securities Exchange Act Release No. 87367 (October 21, 2019), 84 FR 57519 (October 25, 2019) (SR–CboeEDGX–2019–062).

[14] *See* Securities Exchange Act Release No. 88500 (March 27, 2020), 85 FR 18628 (April 2, 2020) (SR–CboeEDGX–2020–013).

[15] *See* Securities Exchange Act Release No. 90233 (October 20, 2020), 85 FR 67787 (October 26, 2020) (SR–CboeEDGX–2020–051).

[16] *See* Securities Exchange Act Release No. 91554 (April 14, 2021), 86 FR 20567 (April 20, 2021) (SR–CboeEDGX–2021–019).

[17] *See* Securities Exchange Act Release No. 93345 (October 15, 2021), 86 FR 58368 (October 21, 2021) (SR–CboeEDGX–2021–045).

[18] *Supra* note 5.

[19] *See* Securities Exchange Act Release No. 94374 (March 7, 2022), 87 FR 14062 (March 11, 2022) (SR–CboeBZX–2022–017).

[20] On June 8, 2022, BZX withdrew SR–CboeBZX–2022–017. *See* Securities Exchange Act Release No. 95074 (June 9, 2022), 87 FR 36197 (June 15, 2022) (SR–CboeBZX–2022–017). Subsequently, on July 8, 2022, BZX submitted a new rule proposal. *See* SR–CboeBZX–2022–037, available at: *https://cdn.cboe.com/resources/regulation/rule_filings/pending/2022/SR-CboeBZX-2022-037.pdf*. Once approved, the Exchange will submit a copycat filing for EDGX.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] *Id.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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 [24] and Rule 19b–4(f)(6) [25] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [26] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [27] 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 become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while a permanent proposal for clearly erroneous execution reviews is being considered.[28] For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change 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 should be approved or disapproved.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6)(iii).

[28] *See* SR–CboeBZX–2022–37 (July 8, 2022).

[29] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–CboeEDGX–2022–031 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CboeEDGX–2022–031. 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 Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2022–031 and should be submitted on or before August 11, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–15541 Filed 7–20–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95297; File No. SR–NYSEArca–2022–40]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make a Non-Substantive Change to Rule 7.31–E(a)(2)(B) Regarding Limit Order Price Protection

July 15, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 8, 2022, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to make a non-substantive change to Rule 7.31–E(a)(2)(B) regarding Limit Order Price Protection. 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

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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 make a non-substantive change to Rule 7.31–E(a)(2)(B) regarding Limit Order Price Protection.

Rule 7.31–E(a)(2)(B) (''Limit Order Price Protection'') provides that a Limit Order to buy (sell) will be rejected if it is priced at or above (below) the greater of $0.15 or a specified percentage away from the National Best Offer (National Best Bid) (''NBO'' and ''NBB,'' respectively). The rule currently states that the ''specified percentage is equal to the corresponding 'numerical guideline' percentage set forth in paragraph (c)(1) of Rule 7.10–E (Clearly Erroneous Executions) for the Core Trading Session.'' Pursuant to Rule 7.10–E(c)(1), those numerical guidelines are as follows: 10% for securities with a reference price up to and including $25.00, 5% for securities with a reference price greater than $25.00 and up to and including $50.00, and 3% for securities with a reference price greater than $50.00.

The Exchange proposes to amend Rule 7.31–E(a)(2)(B) to delete the cross-reference to Rule 7.10–E(c)(1) and instead include the specified percentages from Rule 7.10–E(c)(1) as a table in the text of Rule 7.31–E(a)(2)(B) itself, as follows:

Reference price	Specified percentage
Greater than $0.00 up to and including $25.00	10%
Greater than $25.00 up to and including $50.00	5
Greater than $50.00	3

The Exchange does not propose any change to the percentages themselves or when they would apply. The proposal would not change the operation of the rule. Accordingly, the proposed change would be non-substantive and would raise no novel issues.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and with Section 6(b)(5),[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change to Rule 7.31–E(a)(2)(B) would remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest because deleting the cross-reference to Rule 7.10–E(c)(1) and instead including the relevant percentages from Rule 7.10–E(c)(1) in the text of Rule 7.31–E(a)(2)(B) itself will enhance the clarity of the rule. The proposed change would not change the operation of the rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather would be a non-substantive change to delete the cross-reference to Rule 7.10–E(c)(1) and instead include the relevant percentages from Rule 7.10–E(c)(1) in the text of Rule 7.31–E(a)(2)(B) itself.

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[7] and Rule 19b–4(f)(6) thereunder.[8] 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 prior to 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 and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[9] 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2022–40 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–2022–40. 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

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii). 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.

[8] 17 CFR 240.19b–4(f)(6).

[9] 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2022–40, and should be submitted on or before August 11, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–15543 Filed 7–20–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95296; File No. SR–NYSEAMER–2022–29]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 952NY

July 15, 2022.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 7, 2022, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposal to amend Rule 952NY (Opening Process) regarding the option for ATP Holders to instruct the Exchange to cancel Marketable orders if a series is not opened within a specified time period. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 952NY (Opening Process) regarding the option for ATP Holders to instruct the Exchange to cancel Marketable[4] orders if a series is not opened within a specified time period. Specifically, the Exchange proposes to exclude Good-Til-Cancelled (GTC) Orders.[5]

Rule 952NY sets forth the Exchange's process for opening and reopening a series for trading. Rule 952NY(d) provides ATP Holders with an option to instruct the Exchange to cancel their Marketable orders if an option series has not been opened within a specified time period.[6] Per subparagraph (d) to Rule 952NY, an ATP Holder has the option to instruct the Exchange to cancel all Marketable orders in a series, including GTC Orders, if that series has not opened within a designated time period after the Exchange receives notification that the primary market for the underlying security has disseminated a quote and a trade that is at or within the quote. Because the current rule explicitly includes GTC Orders, once an ATP Holder opts to utilize the ''bulk'' cancellation feature provided by Rule 952NY(d), this feature also applies to its GTC Orders. The Exchange specifically included GTC Orders when it adopted the ''bulk'' cancellation feature in Rule 952NY(d) to make clear to market participants that such order would be included in that functionality.

The Exchange now proposes to modify paragraph (d) to Rule 952NY to explicitly exclude GTC Orders on the basis that such orders are designed to remain in force until executed or specifically cancelled by the order sender. The Exchange believes this proposal would take into account that GTC Order senders tend to be more focused on obtaining an execution thus are willing to wait for the opening of a series rather than cancelling their order. As such, the proposed change would allow the GTC instructions to persist rather than be included in the ''bulk cancel'' under this paragraph (*i.e.,* persist until executed or specifically cancelled by the GTC order sender). The Exchange believes this proposed treatment is consistent with the properties of the order type and the intentions of market participants who utilize GTC Orders, which intent is for an (eventual) execution unless cancelled. This does not mean, however, that such orders cannot be cancelled if a series has not opened per Rule 952NY(d). Rather, ATP Holders (whether they utilize this optional ''bulk'' cancel functionality or not) would still have the option to submit specific requests to cancel certain (or all) of its GTC Orders themselves if a series has not opened on the Exchange per Rule 952NY(d).

The Exchange will announce via Trader Update when this proposed rule change would be implemented, which, subject to effectiveness of this proposed rule change, the Exchange anticipates will be in early August 2022, but no later than September 2022.

2. Statutory Basis

For the reasons set forth above, the Exchange believes the proposed rule change is consistent with Section 6(b) of

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The term ''Marketable'' is defined in Rule 900.2NY(39) to mean, for a Limit Order, the price matches or crosses the NBBO on the other side of the market and that market orders are always considered marketable.

[5] *See* Rule 900.3NY(n) (defining GTC Orders as ''[a]n order to buy or sell that remains in force until the order is filled, cancelled or the option contract expires; provided, however, that GTC Orders will be cancelled in the event of a corporate action that results in an adjustment to the terms of an option contract'').

[6] The Exchange announced on February 17, 2022, that the applicable time period utilized during the Opening Process would be two seconds, as announced here: *https://www.nyse.com/trader-update/history#110000412424.*

the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is designed to exclude GTC Orders from the bulk cancel operation of Rule 952NY(d), which would allow the GTC instructions to persist rather than be included in the ''bulk cancel'' under this paragraph (*i.e.,* persist until executed or specifically cancelled by the GTC order sender). The Exchange believes this proposal would take into account that GTC Order senders tend to be more focused on obtaining an execution thus are willing to wait for the opening of a series rather than cancelling their order. As such, the Exchange believes this proposed treatment is consistent with the properties of the order type and the intentions of market participants who utilize GTC Orders, which intent is for an (eventual) execution unless cancelled. This does not mean, however, that such orders cannot be cancelled if a series has not opened per Rule 952NY(d). Rather, ATP Holders (whether they utilize this optional ''bulk'' cancel functionality or not) would still have the option to submit specific requests to cancel certain (or all) of its GTC Orders themselves if a series has not opened on the Exchange per Rule 952NY(d).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change would impose any burden on intermarket competition, as the proposed rule change is designed to exclude GTC Orders from the bulk cancel operation of Rule 952NY(d), which would allow the GTC instructions to persist rather than be included in the ''bulk cancel'' under this paragraph (*i.e.,* persist until (eventually) executed or specifically cancelled by the GTC order sender). ATP Holders would still have the option to submit specific requests to cancel certain (or all) of its GTC Orders themselves if a series has not opened on the Exchange per Rule 952NY(d).

The Exchange does not believe that the proposed rule change would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change relates to the exclusion of GTC Orders from optional functionality, which functionality ATP Holders are not required to utilize.

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[9] and Rule 19b–4(f)(6) thereunder.[10] Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that such waiver would be consistent with the protection of investors and the public interest because the proposed rule change would allow GTC Orders to be treated in a manner that is consistent with the properties of the order type and the intentions of market participants who utilize GTC Orders. Market participants continue to be able to decide when their GTC Orders should be canceled. For these reasons, 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 30-day operative delay and designates the proposed rule change as operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2022–29 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEAMER–2022–29. 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

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 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.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2022–29 and should be submitted on or before August 11,2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–15542 Filed 7–20–22; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0691]

American Express Ventures SBIC, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 02/02–0691 issued to American Express Ventures SBIC, L.P. said license is hereby declared null and void.

United States Small Business Administration.

Bailey G. DeVries,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2022–15526 Filed 7–20–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 11779]

60-Day Notice of Proposed Information Collection: Petition To Classify Special Immigrant Under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad, or the Surviving Spouse or Child of an Employee of the U.S. Government Abroad

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to September 19, 2022.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2022–0017 in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: PRA_BurdenComments@state.gov*.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Tonya Whigham who may be reached at *PRA_BurdenComments@state.gov* or at 202–485–7586.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Petition to Classify Special Immigrant Under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad, or the Surviving Spouse or Child of an Employee of the U.S. Government Abroad.
- *OMB Control Number:* 1405–0082.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* CA/VO.
- *Form Number:* DS–1884.
- *Respondents:* Aliens petitioning for immigrant visas under INA 203(b)(4) as a special immigrant described in INA section 101(a)(27)(D).
- *Estimated Number of Respondents:* 600.
- *Estimated Number of Responses:* 600.
- *Average Time per Response:* 10 minutes.
- *Total Estimated Burden Time:* 100 hours.
- *Frequency:* Once per petition.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

DS–1884 solicits information from applicants claiming employment-based immigrant visa preference under section 203(b)(4) of the Immigration and Nationality Act based on qualification as a special immigrant described in section 101(a)(27)(D) of the Immigration and Nationality Act. An applicant may file the DS–1884 petition within one year of notification by the Department of State that the Secretary has approved a recommendation for special immigrant status. DS–1884 solicits information that will assist the consular officer in ensuring that the applicant is statutorily qualified to receive such status, including meeting the years of service and exceptional service requirements.

[16] 17 CFR 200.30–3(a)(12).

Additionally, The Emergency Security Supplemental Appropriations Act (ESSAA), signed into law on July 31, 2021, amends section 101(a)(27)(D) of the Immigration and Nationality Act (INA) to extend eligibility for special immigrant status to the surviving spouse and children of an employee of the United States government abroad, provided the employee performed faithful service for not less than 15 years or was killed in the line of duty regardless of years of service. These provisions are effective as of June 30, 2021, and apply retroactively. Pursuant to INA section 204(a)(1)(G)(ii), applicants seeking classification under INA 203(b)(4) to obtain special immigrant status under INA section 101(a)(27)(D) must file a petition with the Secretary of State by submitting Form DS–1884. Form DS–1884 was amended under emergency authority on April 26, 2022, to accommodate this new category of applicants. The Department is proposing to make these emergency amendments permanent as part of this publication.

Methodology

The applicant can obtain a paper copy of the petition from consular posts abroad. The applicant can obtain an electronic copy through the Department's website, *travel.state.gov.* The petition available on the Department's website allows an applicant to complete the petition electronically and then submit the completed form to post.

Julie M. Stufft,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2022–15592 Filed 7–20–22; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Fiscal Year 2022 Allocation of Additional Tariff-Rate Quota Volume for Raw Cane Sugar

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the allocations of additional Fiscal Year (FY) 2022 in-quota quantities of the World Trade Organization (WTO) tariff-rate quota (TRQ) for imported raw cane sugar. The Foreign Agricultural Service (FAS) of the U.S. Department of Agriculture has determined that all sugar entering the United States under the FY 2022 raw sugar TRQ will be permitted to enter the U.S. Customs territory through October 31, 2022.

DATES: The changes made by this notice are applicable as of July 21, 2022.

FOR FURTHER INFORMATION CONTACT: Erin Nicholson, Office of Agricultural Affairs, at 202–395–9419, or *Erin.H.Nicholson@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS), the United States maintains WTO TRQs for imports of raw cane and refined sugar. Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a TRQ for any agricultural product among supplying countries or customs areas. The President delegated this authority to the U.S. Trade Representative under Presidential Proclamations 6763 (60 FR 1007) and 7235 (64 FR 55611).

On July 11, 2022, the FAS announced an additional in-quota quantity of the TRQ for raw cane sugar for the remainder of FY 2022 (ending September 30, 2022) in the amount of 90,718 metric tons raw value (MTRV) (conversion factor: 1 metric ton raw value = 1.10231125 short tons raw value). This quantity is in addition to the minimum amount to which the United States is committed under the WTO Uruguay Round Agreements (1,117,195 MTRV). The FAS also has determined that all sugar entering the United States under the FY 2022 raw sugar TRQ will be permitted to enter the U.S. Customs territory through October 31, 2022, a month later than the usual last entry date. USTR is allocating this additional quantity of 90,718 MTRV to the following countries in the amounts specified below:

Country	FY 2022 raw sugar TRQ increase allocations (MTRV)
Argentina	4,840
Australia	9,342
Barbados	788
Belize	1,238
Bolivia	900
Brazil	16,320
Colombia	2,701
Costa Rica	1,688
Dominican Republic	19,809
Ecuador	1,238
El Salvador	2,926
Eswatini (Swaziland)	1,801
Fiji	1,013
Guatemala	5,402
Guyana	1,351
Honduras	1,126
India	900
Malawi	1,126
Mauritius	1,351
Mozambique	1,463
Panama	3,264
Peru	4,615
South Africa	2,589
Thailand	1,576
Zimbabwe	1,351

The allocations of the in-quota quantities of the raw cane sugar TRQ to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications of origin. Certificates of quota eligibility must accompany imports from any country for which an allocation has been provided.

Greta Peisch,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2022–15539 Filed 7–20–22; 8:45 am]

BILLING CODE 3290–F2–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Fiscal Year 2023 Tariff-Rate Quota Allocations for Raw Cane Sugar and Sugar-Containing Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of country-by-country allocations of the Fiscal Year (FY) 2023 (October 1, 2022 through September 30, 2023) in-quota quantities of the tariff-rate quotas (TRQs) for imported raw cane sugar and sugar-containing products.

DATES: The changes made by this notice are applicable as of July 21, 2022.

FOR FURTHER INFORMATION CONTACT: Erin Nicholson, Office of Agricultural Affairs, at 202–395–9419, or *Erin.H.Nicholson@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS), the United States maintains TRQs for imports of raw cane sugar and refined sugar. Pursuant to Additional U.S. Note 8 to Chapter 17 of the HTSUS, the United States maintains a TRQ for imports of sugar-containing products.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to

allocate the in-quota quantity of a TRQ for any agricultural product among supplying countries or customs areas. The President delegated this authority to the U.S. Trade Representative under Presidential Proclamations 6763 (60 FR 1007) and 7235 (64 FR 55611).

On July 11, 2022, the Foreign Agricultural Service (FAS) of the U.S. Department of Agriculture announced sugar program provisions for FY 2023. FAS announced an in-quota quantity of the TRQ for raw cane sugar for FY 2023 of 1,117,195 metric tons raw value (MTRV) (conversion factor: 1 metric ton raw value = 1.10231125 short tons raw value), which is the minimum amount to which the United States is committed under the World Trade Organization (WTO) Agreement. The U.S. Trade Representative is allocating this quantity (1,117,195 MTRV) to the following countries in the amounts specified below:

Country	FY 2023 TRQ allocations (metric tons raw value)
Argentina	46,260
Australia	89,293
Barbados	7,531
Belize	11,834
Bolivia	8,606
Brazil	155,993
Colombia	25,819
Congo (Brazzaville)	7,258
Costa Rica	16,137
Cote d'Ivoire	7,258
Dominican Republic	189,343
Ecuador	11,834
El Salvador	27,971
Eswatini (Swaziland)	17,213
Fiji	9,682
Gabon	7,258
Guatemala	51,639
Guyana	12,910
Haiti	7,258
Honduras	10,758
India	8,606
Jamaica	11,834
Madagascar	7,258
Malawi	10,758
Mauritius	12,910
Mexico	7,258
Mozambique	13,986
Panama	31,199
Papua New Guinea	7,258
Paraguay	7,258
Peru	44,108
Philippines	145,235
South Africa	24,744
St. Kitts & Nevis	7,258
Taiwan	12,910
Thailand	15,061
Trinidad & Tobago	7,531
Uruguay	7,258
Zimbabwe	12,910

The allocations of the in-quota quantities of the raw cane sugar TRQ to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications of origin. Certificates of quota eligibility must accompany imports from any country for which an allocation has been provided.

With respect to the in-quota quantity of 64,709 metric tons (MT) of the TRQ for imports of certain sugar-containing products maintained under Additional U.S. Note 8 to Chapter 17 of the HTSUS, the U.S. Trade Representative is allocating 59,250 MT to Canada. The remainder of the in-quota quantity, 5,459 MT, is available for other countries on a first-come, first-served basis.

Raw cane sugar and sugar-containing products for FY 2023 TRQs may enter the United States as of October 1, 2022.

Greta Peisch,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2022–15538 Filed 7–20–22; 8:45 am]

BILLING CODE 3290–F2–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Receipt and Request for Review of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Teterboro Airport by The Port Authority of New York and New Jersey. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted for Teterboro Airport were in compliance with applicable requirements, effective June 15, 2017. The proposed noise compatibility program will be approved or disapproved on or before January 11, 2023. This notice also announces the availability of this noise compatibility program for public review and comment.

DATES: The effective date of start of FAA's review of the noise compatibility program is July 15, 2022. The public comment period ends September 13, 2022.

FOR FURTHER INFORMATION CONTACT: Andrew Brooks, Regional Environmental Program Manager, Airports Division, Federal Aviation Administration, 1 Aviation Plaza, Room 516, Jamaica, NY 11434. Phone Number: 718–553–2511. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program (NCP) for Teterboro Airport which will be approved or disapproved on or before January 11, 2023. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps (NEM) that are found by FAA to be in compliance with the requirements of title 49, United States Code (U.S.C.) (Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and Title 14, Code of Federal Regulations (CFR) part 150 (14 CFR 150), promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses. The FAA previously determined that the NEMs for Teterboro Airport were in compliance with applicable requirements under 14 CFR 150, effective June 15, 2017 (Noise Exposure Map Notice for Teterboro Airport, Teterboro, New Jersey, volume 82, **Federal Register**, pages 28545–6, June 22, 2017).

The FAA has formally received the NCP for Teterboro Airport on July 7, 2022. The airport operator has requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a NCP under section 47504 of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of NCPs, but that further review will be necessary prior to approval or disapproval of the program for Teterboro Airport. The formal review period, limited by law to a maximum of 180 days, was initiated on July 15, 2022 and will be completed on or before January 11, 2023.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the proposed NCP for Teterboro Airport are available for examination online at *http://panynjpart150.com/TEB_FNCP.asp.*

The Port Authority of New York and New Jersey has also made a hard copy of the document available for review at the Office of the General Manager for Teterboro Airport, located at 90 Moonachie Avenue, Teterboro, New Jersey. Interested parties can contact the office at (201) 807–4020 to arrange for a review.

Questions regarding this notice may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Jamaica, NY, on July 15, 2022.

David A. Fish,

Director, Airports Division, Eastern Region.

[FR Doc. 2022–15560 Filed 7–20–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Termination of the Preparation of an Air Tour Management Plan at Everglades National Park, Florida

AGENCY: Federal Aviation Administration.

ACTION: Notice of Termination of the Preparation of Air Tour Management Plan.

SUMMARY: The Federal Aviation Administration (FAA), in cooperation with the National Park Service (NPS) (together, the agencies), announces that it has discontinued its preparation of the Air Tour Management Plan (ATMP) for commercial air tour operations over Everglades National Park in Florida because the sole air tour operator with interim operating authority (IOA) for the park voluntarily surrendered its Part 135 operating certificate and is no longer authorized to conduct tours over the park. In addition, the voluntary agreements between the operator and the agencies for Biscayne National Park and Big Cypress National Preserve have been terminated and the operator will be deleted from the FAA's records of authorized commercial air tour operators.

FOR FURTHER INFORMATION CONTACT: Keith Lusk, Program Manager, AWP–1SP, Federal Aviation Administration, Western-Pacific Region, 777 South Aviation Boulevard, Suite 150, El Segundo, California 90245. Telephone: (424) 405–7017.

SUPPLEMENTARY INFORMATION: In a September 3, 2020 **Federal Register** notice (85 FR 55060), the FAA in cooperation with the National Park Service (NPS) provided notice of its intent to complete Air Tour Management Plans (ATMPs) for 23 National Park System units. The agencies began developing ATMPs for these parks, including Everglades National Park, pursuant to the National Parks Air Tour Management Act of 2000 (Pub. L. 106–181) and its implementing regulations contained in 14 CFR part 136, subpart B, National Parks Air Tour Management.

In a July 29, 2021 **Federal Register** notice (86 FR 40897), the FAA, in cooperation with the NPS, announced public meetings and the availability of proposed ATMPs for four National Park System units, including Everglades National Park. The agencies posted the draft ATMP for Everglades National Park on their respective websites and took comments over a 30-day period on the NPS Planning, Environment, and Public Comment System website. The agencies conducted a public meeting for the proposed ATMP for Everglades National Park on August 19, 2021.

On April 13, 2022, the sole operator with interim operating authority (IOA) for Everglades National Park voluntarily surrendered its Part 135 certificate. This certificate is required by the FAA for an operator that provides air transportation of persons or property for compensation or hire. Upon surrender of a Part 135 certificate, all authorizations given to an operator through its Operations Specifications are cancelled, including IOA to conduct commercial air tours over a park. In this case, the operator also had IOA for Biscayne National Park, Big Cypress National Preserve and Dry Tortugas National Park. Given that the operator is no longer authorized to conduct air tours over any of these parks, the operator will be deleted from the FAA's records of authorized commercial air tour operators.

As the sole operator conducting commercial air tours over Everglades National Park has voluntarily surrendered its operating certificate and no longer has the authority to conduct air tours over the park, an ATMP is no longer required or needed at this time. 49 U.S.C. 40128(b)(1)(A). Therefore, the FAA, in cooperation with the NPS, has discontinued its preparation of an ATMP for Everglades National Park.

The FAA and the NPS had also previously entered into voluntary agreements for the conduct of commercial air tours over Big Cypress National Preserve and Biscayne National Park with this same operator under 49 U.S.C. 40128(b)(7). This notice also announces that both of these voluntary agreements have been terminated due to the operator's voluntary surrender of its operating certificate and with it, its authority to conduct air tours over both Big Cypress National Preserve and Biscayne National Park.

Issued in El Segundo, California, on July 15, 2022.

Keith Lusk,

Program Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2022–15524 Filed 7–20–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0067]

General Motors—Receipt of Petition for Temporary Exemption From Various Requirements of the Federal Motor Vehicle Safety Standards for an Automated Driving System-Equipped Vehicle

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of receipt of petition for temporary exemption; request for public comment.

SUMMARY: General Motors (GM) has petitioned NHTSA for a temporary exemption from certain requirements in six Federal motor vehicle safety standards (FMVSS) for its ADS-equipped vehicle, the ''Cruise Origin.'' Specifically, GM seeks exemption from portions of FMVSS No. 102; Transmission shift position sequence, starter interlock, and transmission braking effect, FMVSS No. 104; Windshield wiping and washing systems, FMVSS No. 108; Lamps, reflective devices, and associated equipment, FMVSS No. 111; Rear visibility, FMVSS No. 201; Occupant protection in interior impact, and FMVSS No. 208; Occupant crash protection. NHTSA is publishing this document in accordance with statutory and administrative provisions and seeks comment on the merits of GM's exemption petition and on potential terms and conditions that should be applied to a temporary exemption if granted. After receiving and considering public comments, NHTSA will assess

the merits of the petition and will publish a notice in the Federal notice setting forth NHTSA's reasoning for either granting or denying the petition.

DATES: Comments must be received on or before August 22, 2022.

ADDRESSES: NHTSA invites you to submit comments on the petition described herein and the questions posed below. You may submit comments identified by docket number in the heading of this notice by any of the following methods:

- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Instructions:* All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. NHTSA will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, NHTSA will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: 202–366–9826.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you must submit your request directly to NHTSA's Office of the Chief Counsel. Requests for confidentiality are governed by part 512. NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under part 512. If you would like to submit a request for confidential treatment, you may email your submission to Dan Rabinovitz in the Office of the Chief Counsel at *Daniel.Rabinovitz@dot.gov* or you may contact Dan for a secure file transfer link. At this time, you should not send a duplicate hardcopy of your electronic CBI submissions to DOT headquarters. If you claim that any of the information or documents provided to the agency constitute confidential business information within the meaning of 5 U.S.C. 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with part 512, to the Office of the Chief Counsel. Your request must include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR 512.8) and a certificate, pursuant to § 512.4(b) and part 512, appendix A. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket at the address given above.

FOR FURTHER INFORMATION CONTACT: Callie Roach or Sara R. Bennett, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–366–2992; Fax: 202–366–3820.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Authority and Procedures for Temporary Exemption
III. GM's Petition
A. Overview of the Origin Vehicles
B. Safety Showing
C. GM's Public Interest Argument
IV. Agency's Review of GM's Petition
V. Public Interest Considerations
VI. Statement on Terms
VII. Public Participation

I. Introduction

NHTSA is responsible for promulgating and enforcing Federal motor vehicle safety standards (FMVSS) designed to improve motor vehicle safety. Generally, a manufacturer may not manufacture for sale, sell, offer for sale, or introduce or deliver for introduction into interstate commerce a vehicle that does not comply with all applicable FMVSS.[1] There are limited exceptions to this general prohibition.[2] One path permits manufacturers to petition NHTSA for an exemption for noncompliant vehicles under a specified set of statutory bases.[3] The details of these bases, and on which basis General Motors (GM) petitions under, is provided in the sections of this notice that follow.

On February 17, 2022, GM[4] submitted a petition for exemption for its Origin vehicle, which GM states is a multipurpose passenger vehicle equipped with a ''Level 4 Automated Driving System'' (ADS).[5] This document notifies the public that NHTSA has received from GM a petition for a temporary exemption from portions of six FMVSS.[6] GM requests a two-year exemption, during which it seeks to be allowed to manufacture not more than 2,500 exempted vehicles for each 12-month period covered by the exemption. The exemption, if granted, will allow GM to manufacture and deploy into interstate commerce vehicles that lack certain safety features required by the FMVSS. GM states that it assures its majority-owned subsidiary

[1] 49 U.S.C. 30112(a)(1).

[2] 49 U.S.C. 30112(b); 49 U.S.C. 30113; 49 U.S.C. 30114.

[3] 49 U.S.C. 30113.

[4] The petition submitted by GM states ''General Motors LLC ('GM'), a Delaware limited liability company, with support from its majority-owned self-driving subsidiary, Cruise LLC ('Cruise'), respectfully submits this petition to the National Highway Traffic Safety Administration ('NHTSA') for temporary exemption ('Petition') from certain Federal Motor Vehicle Safety Standards ('FMVSS' or 'Standards').'' Page 5 of the petition. In other places, the petitions states: ''GM and Cruise respectfully request temporary exemptions consistent with the Vehicle Safety Act, NHTSA guidance, and applicable law for certain requirements of nine FMVSS, all of which were developed for human-driven operations. [. . .] GM and Cruise seek these exemptions pursuant to both the 'equivalent overall safety' and 'evaluation of a low emission vehicle' provisions established by Congress in 49 U.S.C. 30113(b)(3).'' *Id.*

[5] Page 2 of the Petition.

[6] Note that the petition discussed in this notice is separate and distinct from the petition GM submitted in 2018 for its ''Zero Emission Autonomous Vehicle'' (ZEAV). NHTSA sought comment on this petition in a **Federal Register** notice published on March 19, 2019 (84 FR 10182). In 2020, GM withdrew the petition. GM's submission of this new petition, requested jointly with Cruise, began a new part 555 proceeding. Accordingly, while comments received on the 2019 notice may inform NHTSA's decision-making regarding processing part 555 petitions generally, NHTSA will not consider comments from the previous notice as comments received on this notice.

Cruise will maintain ''continuous ownership and control of the Origin'' vehicles produced under this exemption, meaning that GM commits that the vehicles produced under this exemption will not be sold and will stay under GM's ownership and possession, either by itself or through its majority-owned and controlled subsidiary, Cruise, throughout the entire lifecycle of the vehicles.

II. Authority and Procedures for Temporary Exemption

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified at 49 U.S.C. chapter 301, authorizes the Secretary of Transportation to exempt motor vehicles, on a temporary basis and under specified circumstances, and on terms the Secretary considers appropriate, from a FMVSS or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA.[7]

The Safety Act authorizes the Secretary to grant, in whole or in part, a temporary exemption to a vehicle manufacturer if the Secretary makes one of four specified findings.[8] The Secretary must also look comprehensively at the request for exemption and find that the exemption is consistent with the public interest and with the objectives of the Safety Act.[9]

The Secretary may act under § 30113 on finding that:

(i) Compliance with the standard[s] [from which exemption is sought] would cause substantial economic hardship to a manufacturer that has tried to comply with the standard[s] in good faith;

(ii) the exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard;

(iii) the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle; or

(iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.[10]

GM seeks exemption under two alternative bases, stating that its Origin vehicle meets both bases. The first basis is that an exemption would make the development or field evaluation of a low-emission vehicle easier without unreasonably lowering the safety of that vehicle.[11] The second basis is that compliance with the six FMVSS would prevent GM from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt (*i.e.,* compliant) vehicles.[12]

NHTSA established 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions. The requirements in 49 CFR 555.5 state that the petitioner must set forth the basis of the petition by providing the information required under 49 CFR 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of the Safety Act.

A petition justified on the low-emission vehicle exemption basis must include the information specified in 49 CFR 555.6(c). Similarly, a petition submitted on the basis that the applicant is otherwise unable to sell (or in this instance, manufacture) a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempt vehicle must include the information specified in 49 CFR 555.6(d).

III. GM's Petition

The following discussion provides: An overview of the Origin based on information submitted in GM's petition; a brief summary of GM's safety showing and arguments for exemption from portions of certain FMVSS; and a summary of the petitioner's arguments that granting its petition for exemption would be in the public interest. Because GM has sought confidential treatment of some aspects of its petition, a redacted version of GM's petition is included in the docket referenced at the beginning of this notice. NHTSA notes that any of the descriptions provided in this section are GM's characterizations included in its petition and do not necessarily reflect the views of NHTSA.

A. Overview of the Origin Vehicles

GM describes the Origin as a zero-emission American-made vehicle, operated by an ADS, that is built for fleet-controlled rideshare and delivery services. GM states that it and Cruise will manage the fleet of vehicles and that the vehicle is classified as a multipurpose vehicle (MPV) with a curb weight of 3,084 kg and a gross vehicle weight rating (GVWR) of 3,640 kg. While its size is similar to that of a modern sport utility vehicle (SUV), its design deviates from more traditional vehicle designs in a number of ways. First, the Origin has carriage seating, meaning a front row of seats that faces backwards and a back row of seats that faces forwards. It also has split sliding doors on either side of the vehicle to permit passenger exit and entry. The Origin is operated almost entirely by an ADS,[13] and thus, is not equipped with manually operated driving controls or features (*e.g.,* steering wheel, pedals, manual turn signals, mirrors) that a human might need if they were driving. In its petition, GM provides many photos of the Origin.

GM also includes details of various novel, operational information about its vehicles, such as the start/stop ride button, the call button that contacts rider support, the mobile application GM intends to use, the battery that powers the vehicle, various occupant protection systems, and information about the Origin's sensing systems. Finally, GM provides some basic information about the ADS and various safety topics surrounding the ADS and its operation. For specific FMVSS, GM's petition goes into greater detail about how the ADS and the accompanying sensor suite fulfill those FMVSS requirements with which it does not comply and is seeking exemption.

B. Safety Showing

GM has petitioned NHTSA for a temporary exemption from certain requirements in six FMVSS for its ADS-equipped vehicle, the Origin. Specifically, GM seeks exemption from portions of:

- FMVSS No. 102; Transmission shift position sequence, starter interlock, and transmission braking effect.
- FMVSS No. 104; Windshield wiping and washing systems.
- FMVSS No. 108; Lamps, reflective devices, and associated equipment.
- FMVSS No. 111; Rear visibility.
- FMVSS No. 201; Occupant protection in interior impact, and
- FMVSS No. 208; Occupant crash protection.

In its petition for exemption, GM states that certain requirements are either not necessary for safety as applied to the Origin's design and performance, or their purpose and intent continue to be met through innovative, alternative means that each provide an equivalent level of safety, and together provide an overall safety level at least equal to the overall safety of nonexempt vehicles and would not unreasonably lower the safety of the vehicle. GM states its

[7] 49 CFR 1.95.

[8] 49 U.S.C. 30113(b)(3).

[9] 49 U.S.C. 30113(b)(3)(A).

[10] 49 U.S.C. 30113(b)(3)(B).

[11] 49 U.S.C. 30113(b)(3)(B)(iii).

[12] 49 U.S.C. 30113(b)(3)(B)(iv).

[13] The petition mentions ''Cruise Remote Assistance.''

''safety-equivalency approach to the FMVSS that are the subject of this Petition has focused on the performance requirements of the applicable standard, considering the language of the applicable standard as a whole, with a particular focus on NHTSA's stated purpose and intent for that standard.'' A short description of the rationale GM provides for why its Origin vehicle should receive an exemption follows. The appendixes attached to GM's petition include additional support for its arguments related to each FMVSS.

GM petitions for exemption from portions of four of NHTSA's crash avoidance FMVSS. FMVSS No. 102 requires the identification of gear selection shift positions to be visibly identified, including the positions in relation to each other. GM argues that the Origin, unlike a human, does not need transmission shift positions to be presented visibly in relation to each other because the Origin is programmed to always select the correct shift position and the ADS knows which position it is selecting. For GM's petition for exemption from portions of FMVSS No. 104, GM argues that the purpose and intent of the safety standard is obviated by the Origin's sensor system design. GM argues the Origin's sensor system does not rely on the windshield for forward visibility thanks to its suite of sensors surrounding the Origin vehicles and thus, is not equipped with a windshield wiping or washing system. Portions of FMVSS No. 108 contain requirements related to manual controls for use by humans in switching various signals and lights. GM argues an ADS would not need manual devices to operate signals and lights, and the Origin's ADS is capable of activation and control of all lighting and signals through other means. FMVSS No. 111 contains requirements for outside and/or inside mirrors and linger time of a rearview image, among other requirements. GM argues that its sensor suite on the Origin provides the ADS the same, if not better, visibility than FMVSS No. 111 would provide human drivers. Additionally, GM points out that the purpose and intent of FMVSS No. 111 is based on human perception and visibility so there is no operational safety need for these requirements when applied to a vehicle driven by an ADS.

GM petitions for exemption from portions of two of NHTSA's occupant protection FMVSS. The first is FMVSS No. 201, which requires that a sun visor be provided for each front outboard seating position. GM argues that sun visors are not necessary because the Origin is not operated by a human driver, and the ADS does not use the windshield for visibility. Next, FMVSS No. 208 requires that a seat belt assembly provided at the left front outboard seating position shall be equipped with a warning device that activates based on the status of the ignition switch. GM states that it meets the requirement that there be a warning system, it provides warnings to occupants when the seat belt is not fastened, but that such a warning is based upon occupants pressing start/stop buttons in the vehicle (*i.e.,* not the ignition position). Thus, GM argues it meets the purpose and intent of the requirement.

Finally, GM's petition included requests for exemption from FMVSS Nos. 203, 204, and 207, but NHTSA believes exemption from portions of those standards is no longer necessary due to the publication of the Occupant Protection for Vehicles with Automated Driving Systems final rule, published in the **Federal Register** on March 30, 2022.[14] GM's petition states that it may amend its petition to address the Occupant Protection for Vehicles with Automated Driving Systems final rule, including to remove those safety standards from the petition.

C. GM's Public Interest Argument

GM argues that granting its petition for exemption for the Origin furthers the Safety Act's objectives and advances other public interests, including:

1. Enabling the sharing of substantive ADS information with NHTSA;
2. Promoting safety of the transportation system by advancing autonomous technology;
3. Taking an important step towards unlocking potentially significant environmental benefits;
4. Helping advance environmental justice;
5. Helping advance greater transportation accessibility for all users;
6. Supporting US jobs and investment;
7. Supporting the US with shaping AV norms and standards; and,
8. Helping foster public acceptance of autonomous and electric technologies.

NHTSA requests comment on the strength and persuasiveness of these arguments and the support for each provided by GM.

IV. Agency's Review of GM's Petition

NHTSA has not yet made any judgment on the merits of GM's petition nor on the adequacy of the information submitted. NHTSA will assess the merits of the petition and consider public comments on the petition, as well as any additional information that the agency receives from GM. NHTSA is placing a non-confidential copy of the petition in the docket in accordance with statutory and administrative provisions.

V. Public Interest Considerations

Section 30113 authorizes NHTSA to grant exemptions that are consistent with the public interest and the Safety Act and authorizes NHTSA to apply appropriate terms to any such grant. Whether granting the exemption is consistent with the public interest and the objectives of the Safety Act are required findings that are no less critical than a discussion of the particular statutory basis on which the exemption is sought (*e.g.,* whether the subject vehicle provides an equivalent level of safety to a nonexempt vehicle). Although NHTSA's mission is primarily a safety mission, NHTSA's authority under section 30113 requires the agency to extend its consideration to issues beyond traffic safety.[15] NHTSA is seeking comment on the agency's consideration of specific matters of public interest in both deciding whether granting the exemption is consistent with the public interest and in developing terms and conditions with which the petitioner must comply if its petition is granted.

As the expert agency in automotive safety and the interpretation of its existing standards, NHTSA has significant discretion in making the safety findings required under these provisions. Further, the broad authority to determine whether the public interest and general goals of the Safety Act will be served by granting the exemption allows the agency to consider many diverse effects of the exemption, including: the overall safety of the transportation system beyond the analysis required in the safety determination; how an exemption will further technological innovation; economic impacts, such as consumer benefits; and environmental effects.

ADS vehicles have the potential to benefit our transportation system significantly beyond the analysis required in the safety determination. As NHTSA considers the potentially transformative impact of ADS

[14] 87 FR 18560.

[15] NHTSA stated, in the February 11, 2020 **Federal Register** notice granting an exemption for the first ADS-equipped vehicle to Nuro, that the broad authority to determine whether the public interest and general goals of the Vehicle Safety Act will be served by granting the exemption allows the Secretary to consider many diverse effects of the exemption, including: The overall safety of the transportation system beyond the analysis required in the safety determination; how an exemption will further technological innovation; economic impacts, such as consumer benefits; and environmental effects. (85 FR 7826, 7828).

technology, it is also considering its role in encouraging the use of ADS vehicles in ways that maximize their benefit to society. Specifically, NHTSA is exploring its role and responsibility in considering environmental impacts, accessibility and equity when an exemption is sought for an ADS-equipped vehicle. Climate, accessibility and equity, in addition to road safety, are important public interest goals of the Department and NHTSA. NHTSA will also continue to consider how exemptions affect the development of advanced vehicle technologies.

With regard to environmental impacts, NHTSA seeks to learn about the interplay between fuel efficiency and ADS technologies. NHTSA seeks public comment on whether it should adopt reporting requirements when granting part 555 petitions for vehicles with ADS that would allow the agency to better understand the energy use of the vehicles throughout their service life and, possibly, to better assess, and quantify, the environmental impacts of ADS-equipped vehicles. NHTSA is also seeking comment regarding the weight it should give to the environmental impacts of internal combustion engine (ICE) vehicles when deciding whether to grant an exemption to an ICE vehicle moving forward. Finally, NHTSA is seeking comment about whether to seek from entities that receive a grant of a petition information about how, exactly, their vehicles would promote environmental justice.

NHTSA seeks comment on the extent to which accessibility and equity might be considered in either determining whether an exemption is in the public interest or applying appropriate conditions to an exemption as it is granted. Proponents of ADS technology often claim that ADS-equipped vehicles would help advance greater transportation accessibility for persons with disabilities. GM states in its petition that one of the reasons that granting its petition for the Origin vehicle is in the public interest is because doing so would help advance greater transportation accessibility for all users. GM states broadly that the Origin will ''help expand mobility options for seniors, people who are blind or have low vision, and other communities that have traditionally had lower access to reliable transportation.'' GM states in the petition that it has conducted studies to inform user experience and vehicle design in ways that would make the Origin more accessible for all passengers, and that this research has resulted in GM developing a wheelchair accessible version of the Origin. GM also implies that it has taken into account the needs of people who are blind or have low vision. NHTSA appreciates this potential and appreciates that manufacturers are considering the benefits to underserved populations.

NHTSA is interested in learning more about specific actions that manufacturers and operators of ADS-equipped exempted vehicles are taking to ensure that accessibility and equity goals will be met. For example, we are considering seeking information from entities that receive a grant of a petition about how they ensure that their ride-hailing services comply with any applicable Americans with Disabilities Act (ADA) requirements. NHTSA is also considering seeking information about how many vehicles manufactured under a part 555 exemption would be wheelchair accessible. Additionally, NHTSA is interested in what, specifically, the manufacturer would do to ensure access to people with vision disabilities, or to ensure that persons with wheelchairs, walkers, or other mobility devices, can safely transition from the vehicle to the sidewalk and vice versa. NHTSA seeks comment on these questions about accessibility.

NHTSA is also considering seeking information about how the exempted vehicles would be used to improve accessibility and equity in serving underserved communities. The agency seeks comments on whether an entity that receives a grant of a petition should be required to provide plans about how it intends to ensure that access to its services is equitable in terms of neighborhood, income levels, race and ethnicity, age (etc.), and/or should be required to provide reports of how it achieved those objectives through use of the exempted vehicles. Should the agency require manufacturers granted an exemption to report to NHTSA about how the exempted vehicles will be used to improve accessibility and equity in serving underserved communities? Data reported on these elements would help DOT and NHTSA assess if assumptions about the beneficial societal impacts of ADS-equipped vehicles are bearing out, and if not, why not.

NHTSA is also considering seeking information about the economic impacts of granting a petition. Many advocates of ADS technology argue that deploying ADS-equipped vehicles will increase U.S. jobs and innovation. For example, should the agency seek information about potential job creation and displacement of workers? Should NHTSA seek other information about how the grant would impact investment in the U.S. economy, such as through the generation of tax revenue or development of intellectual property?

Further, NHTSA seeks comments on whether the agency should consider additional matters of public interest in developing terms and conditions with which a part 555 petitioner must comply if its petition were granted. To the extent that you believe other areas should be considered, please tell us how we can best promote the public interest through the exercise of our discretion in granting exemptions and establishing terms and conditions to such exemptions.

VI. Statement on Terms

Section 30113 authorizes the Secretary, NHTSA by delegation, to condition the grant of a temporary exemption ''on terms [NHTSA] considers appropriate.'' [16] The agency's authority to set terms is broad. It is not limited solely to terms and conditions relevant to its specific determination. Instead, this provision allows the agency to set terms that would allow NHTSA to collect information about the exempted vehicles that would service the public interest, such as information concerning the performance of the ADS.[17]

Once a manufacturer receives a temporary exemption from the prohibitions of 49 U.S.C. 30112(a)(1), NHTSA can affect the use of those vehicles produced pursuant to the exemption through the terms in partially or fully granting the exemption or as it exercises its enforcement authority (*e.g.,* its safety defect authority). The agency's authority to set terms is broad. Since the terms would be the primary means of monitoring and affecting the operation of the exempted vehicles, the agency would carefully consider whether to establish terms and what types of terms to establish if it were to grant a petition. The manufacturer would need to agree to abide by the terms set for that exemption in order to begin and continue producing vehicles pursuant to that exemption.

Due to the novel nature of ADS technology and NHTSA's interest in better understanding the safety and utility of ADS-equipped vehicles, if the petition were granted in whole or in part, the agency anticipates applying conditions to the grant.

NHTSA exercised its ability to apply a variety of terms when it granted Nuro's petition for the first ADS-equipped vehicle exempted under part

[16] 49 U.S.C. 30113(b)(1) (delegation of authority at 49 CFR 1.95).

[17] 85 FR 7826, 7840 (February 11, 2020).

555.[18] The terms NHTSA chose were designed to enhance the public interest and included post-crash reporting, periodic reporting, terms concerning cybersecurity, and certain general requirements. NHTSA seeks comment on whether the agency should apply the same type of conditions, and others, to GM if NHTSA decides to grant its petition.

NHTSA will carefully consider whether to establish terms and what types of terms to establish if it grants GM's petition. If GM's petition were granted, GM would need to agree to abide by the terms set for that exemption in order to begin and continue producing vehicles pursuant to that exemption. Nothing in either the statute or implementing regulations limits the application of these terms to the period during which the exempted vehicles are produced. NHTSA could set terms that continue to apply to the vehicles throughout their normal service life if it deems that such application is necessary to be consistent with the Safety Act.

Thus, if NHTSA were to grant an exemption, in whole or in part, it could establish, for example, reporting terms to ensure a continuing flow of information to the agency throughout the normal service life of the exempted vehicles, not just during the two-year period of exemption. When NHTSA granted Nuro's exemption, NHTSA stated that the terms would apply throughout the useful life of the vehicles. Beyond the two-year exemption period, GM could be subject to civil penalties for failure to comply with the terms established as a condition for granting the part 555 exemption.

Given the uniqueness of GM's vehicles, its petition, and public interest concerns, extended reporting may be appropriate. Since only a portion of the total mileage that the vehicles, if exempted, could be expected to travel during their normal service life would have been driven by the end of the exemption period, the data would need to be reported over a longer period of time to enable the agency to make sufficiently reliable judgments. Such judgments might include those made in a retrospective review of the agency's determination about the anticipated safety effects of the exemption.

NHTSA could also establish terms to specify what the consequences would be if the flow of information were to cease or become inadequate during or after the exemption period. Other potential terms could include limitations on vehicle operations (based upon speed, weather, identified Operational Design Domains, road types, ownership, and management, etc.). Conceivably, some conditions could be graduated, *i.e.,* restrictions could be progressively relaxed after a period of demonstrated driving performance. Further, as with data-sharing, it may be necessary to specify that these terms would apply to the exempted vehicles beyond the two-year exemption period.

NHTSA notes that its regulations at 49 CFR part 555 provide that the agency can revoke a part 555 exemption if a manufacturer fails to satisfy the terms of the exemption. NHTSA could also seek injunctive relief.[19]

NHTSA seeks comment on whether the agency should apply the same types of conditions that it applied to Nuro's exemption for ADS-equipped low-speed occupantless vehicles. NHTSA seeks comment not only on whether these conditions are appropriate to apply to GM's exemption, if granted, but also whether there are additional terms that NHTSA should apply. GM's exemption request differs significantly from Nuro's in that the request is for a passenger vehicle, and it is not limited to 25 mph, as was the case of the Nuro vehicle. As such, there are likely to be additional terms that would be appropriate to apply to GM's exemption, if granted.

Please comment on whether NHTSA should apply the following terms and conditions to a potential grant of GM's exemption request:

1. Reporting within 24 hours of an exempt vehicle being involved in any crash, to include:[20]

a. The data elements specified in 49 CFR part 563, Event Data Recorders.[21]

b. If the ADS was in control of the vehicle during the event, a detailed timeline of the 30 seconds leading up to the crash, including a detailed read-out and interpretation of all sensors in operation during that time period, the ADS's object detection and classification output, and the vehicle actions taken (*i.e.,* commands for braking, throttle, steering, etc.).

c. If a human operator took over control of the vehicle prior to the event, a detailed timeline of the 30 seconds leading up to the human operator taking over control, including a detailed read-out and interpretation of all ADS sensors in operation during that time period, the ADS's object detection and classification output, and the vehicle actions taken (*i.e.,* commands for braking, throttle, steering, etc.).

d. If a human operator was in control of the vehicle at any point during or up to 30 seconds before the event, a detailed timeline of any actions the human operator took that affected the crash event, as well as any technical problems that could have contributed to the crash (signal latency, poor field of view, etc.).

e. Any additional information about the event that NHTSA deems pertinent for determining either crash or injury causation, including additional information related to the ADS or remote operator system.

2. Beginning 90 days after the date of the exemption grant, and at an interval of every 90 days thereafter, a report detailing the operation of each exempted vehicle in operation during that time period. This report may provide this information either in aggregate or on a per-vehicle basis, but it must include the following:

a. A calculation of the total miles the vehicle has traveled using the ADS during the report period, and heat maps of the geofenced area in which the vehicle operates to illustrate travel density.

b. Detailed descriptions of any material changes made to the subject vehicle's Operational Design Domain (ODD) or ADS software during the reporting period.

c. Detailed descriptions of any incidents in which any exempted vehicle violated any local or State traffic law, whether operating using the ADS or under human control.

d. Detailed descriptions of any incidents in which the exempt vehicles experienced a sustained acceleration of at least 0.7g on any axis for at least 150 ms, or of any incidents in which the vehicle had an unexpected interaction with humans or other objects (other than crashes that require immediate reporting).

e. Detailed descriptions of all instances in which a public safety official, including law enforcement, attempted to interact with an exempted vehicle, such as to pull it over, or contacted GM regarding an attempted interaction with an exempted vehicle.

f. Detailed descriptions of any ''minimal risk condition fallback'' events that occurred, even if no crash has occurred. If the event has occurred because the vehicle self-diagnosed a malfunction of a vehicle system, the report must include a detailed description of the cause and nature of the malfunction, and what remedial steps were taken. If the event was caused by the vehicle encountering a complex or unexpected driving situation, the report must include a detailed timeline of the ADS's decision-making process that led to the event, including any difficulties the ADS had in detecting and classifying objects.

g. In addition, GM must make necessary staff available to meet with NHTSA staff quarterly to discuss the status of its deployment program.

3. GM must have a documented cybersecurity incident response plan that includes its risk mitigation strategies and the incident notification requirements listed below.

[18] *Id.*

[19] 49 U.S.C. 30163(a).

[20] GM and Cruise are currently required to submit reports to NHTSA for crashes involving ADS pursuant to NHTSA Standing General Order (2021–01). More information about the General Order is available on NHTSA's website at *https://www.nhtsa.gov/laws-regulations/standing-general-order-crash-reporting-levels-driving-automation-2-5.*

[21] See Table I—Reported Data Elements and Table II—Reported Data Element Format. 85 FR 78426, 7841 (February 11, 2020).

a. GM must cease operations of all exempt vehicles immediately upon becoming aware of any cybersecurity incident involving the exempt vehicles and any systems connected to the exempt vehicles that has the potential to impact the safety of the exempt vehicles.

b. No later than 24 hours after being made aware of a cybersecurity incident, GM must inform NHTSA's Office of Defects Investigations (ODI) of the incident. GM must also respond to any additional requests for information from NHTSA on the cybersecurity incident.

c. Prior to resuming its operation of any exempt vehicles following the discovery of a cybersecurity incident, GM must inform NHTSA of the steps it has taken to patch the vulnerability and mitigate the risks associated with the incident, and receive NHTSA approval to resume operation.

4. GM must be capable of issuing a ''stop order'' that causes all deployed exempted vehicles to, as quickly as possible, cease operations in a safe manner, in the event that NHTSA or GM determines that the exempted vehicles present an unreasonable or unforeseen risk to safety.

5. GM must coordinate any planned deployment of the exempted vehicles or change to the ADS/ODD with State and local authorities with jurisdiction over the operation of the vehicle as required by the laws or regulations of that jurisdiction.

6. The exempted vehicles must comply with all State and local laws and requirements at all times while in operation. Each vehicle must be duly permitted, if applicable, and authorized to operate within all properties and upon all roadways traversed.

7. GM must maintain ownership and operational control over the exempted vehicle that are built pursuant to this exemption for the life of those vehicles.

8. GM must create and maintain a hotline or other method of communication for the public and GM employees to directly communicate feedback or potential safety concerns about the exempted vehicles to the company.

9. If there are other categories of data that should be considered, please identify them and the purposes for which they would be useful to the agency in carrying out its responsibilities under the Safety Act.

10. If the agency were to require the reporting of data, for what period should the agency require it to be reported—the two-year exemption period or the vehicles' entire normal service life?

11. Given estimates that vehicles with ADS would generate terabytes of data per vehicle per day, how should the need for data be appropriately balanced with the burden on manufacturers of providing and maintaining it and the ability of the agency to absorb and use it effectively?

12. As explained in the section above, NHTSA has broad authority to determine whether the public interest and general goals of the Safety Act will be served by granting an exemption. NHTSA seeks to understand the many diverse effects of the exemption, including: the overall safety of the transportation system beyond the analysis required in the safety determination; how an exemption will further technological innovation; whether the exemption will address transportation accessibility and equity; economic impacts, such as consumer benefits; and environmental effects.

13. With regard to environmental impacts, how should NHTSA use the part 555 exemptions to learn about the interplay between fuel efficiency and ADS technologies? Should the agency adopt reporting requirements that would allow the agency to better understand the energy use of the vehicles throughout their service life and possibly better assess, and quantify, the environmental impacts of ADS-equipped vehicles? Should NHTSA require an entity whose petition has been granted to provide data about, for example, how often and how far its vehicles are driving around unoccupied v. occupied? Is there other information related to the environmental consequences and effects of the vehicles covered by the petition that NHTSA should require from entities granted an exemption?

14. How should NHTSA consider accessibility in applying appropriate conditions to an exemption if it were granted? As noted above, many proponents of ADS technology often claim that ADS-equipped vehicles could help advance greater transportation accessibility for persons with disabilities. Should NHTSA impose conditions on grants of part 555 exemptions to learn more about specific actions that manufacturers and operators of ADS-equipped exempted vehicles are planning, or have taken, to further the attainment of accessibility and equity goals? Should NHTSA seek information from manufacturers granted an exemption as to how they ensure that their ride-hailing services comply with any applicable Americans with Disabilities Act (ADA) requirements, how many vehicles would be wheelchair accessible, how they reach people with disabilities to offer access to ride sharing services, or whether the exempt vehicles provide other accommodations for individuals with disabilities, such as communication and/or human-machine interface (HMI) features designed for individuals with sensory disabilities (such as sight or hearing) or cognitive disabilities? Should NHTSA require grantees to report on efforts, such as research or community outreach, that the manufacturer is planning, or has taken, to increase the likelihood that accessibility goals will be met? Comments are requested on whether there is other information related to accessibility that NHTSA should require from an entity when granting its petition.

15. How should NHTSA consider equity in applying appropriate conditions to an exemption if it were granted? For example, should NHTSA require entities receiving a grant of their petition to report how the exempted vehicles will be used to improve accessibility and equity in serving underserved communities? Should such an entity be required to provide plans about how it intends to ensure that access to its services is equitable in terms of neighborhood, income levels, race and ethnicity, age (etc.), and/or provide reports of how it achieved those objectives through use of the exempted vehicles? Should entities receiving a petition grant be required to report on barriers they encountered to deploying ADS-equipped vehicles in underserved communities and how those barriers could be overcome? Should such an entity be required to provide demographic data about its services, or report on efforts, such as research or community outreach, that the manufacturer is planning or has taken to ensure better that equity goals will be met? Comments are requested on whether there is other information related to equity that NHTSA should require when granting a petition.

16. How should NHTSA consider economic impacts when applying appropriate conditions to an exemption if it were granted?

Public Participation

A. Request for Comment and Comment Period

The agency seeks comment from the public on the merits of GM's petition for a temporary exemption. NHTSA is also seeking comment on the potential types of terms the agency should set if the agency decides to grant the petition.

NHTSA is providing a 30-day comment period. After considering public comments and other available information, NHTSA will publish a notice of final action on the petition in the **Federal Register**.

B. Instructions for Submitting Comments

How long do I have to submit comments?

Please see **DATES** section at the beginning of this document.

How do I prepare and submit comments?

- Your comments must be written in English.
- To ensure that your comments are correctly filed in the Docket, please include the Docket Number shown at the beginning of this document in your comments.
- If you are submitting comments electronically as a PDF (Adobe) File, NHTSA asks that the documents be submitted using the Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submissions. Comments may be submitted to the docket electronically by logging onto the Docket Management System website at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://www.bts.gov/programs/statistical_policy_and_research/data_quality_guidelines.*

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you must submit your request directly to NHTSA's Office of the Chief Counsel. Requests for confidentiality are governed by part 512. NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under part 512. If you would like to submit a request for confidential treatment, you may email your submission to Dan Rabinovitz in the Office of the Chief Counsel at *Daniel.Rabinovitz@dot.gov* or you may contact Dan for a secure file transfer link. At this time, you should not send a duplicate hardcopy of your electronic CBI submissions to DOT headquarters. If you claim that any of the information or documents provided to the agency constitute confidential business information within the meaning of 5 U.S.C. 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with part 512, to the Office of the Chief Counsel. Your request must include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR 512.8) and a certificate, pursuant to § 512.4(b) and part 512, appendix A. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket at the address given above.

Will the Agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How can I read the comments submitted by other people?

You may see the comments on the internet. To read the comments on the internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

Please note that, even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

(Authority: 49 U.S.C. 30113 and 49 U.S.C. 30166; delegations of authority at 49 CFR 1.95.)

Issued in Washington, DC, under authority delegated in 49 CFR 1.95.

Steven S. Cliff,

Administrator.

[FR Doc. 2022–15557 Filed 7–20–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0066]

Ford Motor Company—Receipt of Petition for Temporary Exemption From Various Requirements of the Federal Motor Vehicle Safety Standards for an Automated Driving System-Equipped Vehicle

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of receipt of petition for temporary exemption; request for public comment.

SUMMARY: Ford Motor Company (Ford) has petitioned NHTSA for a temporary exemption from certain requirements in seven Federal Motor Vehicle Safety Standards (FMVSS) for vehicles that will be equipped with automated driving systems (ADS). Ford is seeking an exemption from portions of FMVSS No. 101, *Controls and Displays;* No. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect;* No. 108, *Lamps, Reflective Devices, and Associated Equipment;* No. 111, *Rear Visibility;* No. 126, *Electronic Stability Control Systems;* No. 135, *Light Vehicle Brake Systems;* and No. 138, *Tire Pressure Monitoring Systems.* NHTSA is publishing this document in accordance with statutory and administrative provisions and seeks comment on the merits of Ford's exemption petition and on potential terms and conditions that should be applied to the temporary exemption if granted. After receiving and considering public comments, and any additional information provided by Ford, NHTSA will assess the merits of the petition and will publish a notice in the Federal notice setting forth NHTSA's reasoning for either granting or denying Ford's petition.

DATES: Comments must be received on or before August 22, 2022.

ADDRESSES: NHTSA invites you to submit comments on the petition described herein and the questions posed below. You may submit comments identified by docket number in the heading of this notice by any of the following methods:

- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. NHTSA will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, NHTSA will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: 202–366–9826.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to

provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Confidential Business Information: Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you must submit your request directly to NHTSA's Office of the Chief Counsel. Requests for confidentiality are governed by part 512. NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under part 512. If you would like to submit a request for confidential treatment, you may email your submission to Dan Rabinovitz in the Office of the Chief Counsel at *Daniel.Rabinovitz@dot.gov* or you may contact Dan for a secure file transfer link. At this time, you should not send a duplicate hardcopy of your electronic CBI submissions to DOT headquarters. If you claim that any of the information or documents provided to the agency constitute confidential business information within the meaning of 5 U.S.C. 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with part 512, to the Office of the Chief Counsel. Your request must include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR 512.8) and a certificate, pursuant to § 512.4(b) and part 512, appendix A. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket at the address given above.

FOR FURTHER INFORMATION CONTACT: Callie Roach, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–366–2992; Fax: 202–366–3820.

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I. Background

NHTSA is responsible for promulgating and enforcing FMVSS designed to improve motor vehicle safety. Generally, a manufacturer may not manufacture for sale, sell, offer for sale, or introduce or deliver for introduction into interstate commerce a vehicle that does not comply with all applicable FMVSS. There are limited exceptions to this general prohibition. One of these exceptions allows manufacturers to petition NHTSA for a temporary exemption for noncompliant vehicles that have an overall safety level at least equal to the overall safety level of nonexempt vehicles.[1]

In July 2021, Ford submitted an exemption petition under 49 CFR part 555 for a vehicle equipped with a Society of Automotive Engineers (SAE) International Level 4 ADS [2] that can be operated in either a human-driven mode (Manual Mode), or in an ADS-driven mode (AV Mode).[3] Ford states that it is seeking an exemption from portions of seven FMVSS to allow for the controlled deployment and usage of the vehicle ''on tested, proven roadways during appropriate weather conditions.'' [4] Ford states that, given that human occupants are not intended to participate in the driving task while the vehicle is being operated in AV Mode, Ford believes having active driving controls and communications would introduce an unacceptable risk to safety.[5] Ford further states that, if granted, it does not intend to sell the vehicles to individual customers.[6] Instead, Ford states that the vehicles will be fleet owned and operated for their full service life.[7] Ford also states that no more than 2,500 exempted vehicles will be produced and introduced into interstate commerce within a 12-month period during the 2-year exemption.[8]

This notice accomplishes two things: (1) it serves as a notice of receipt of Ford's petition and (2) it requests comments on the petition and on conditions that could be applied if NHTSA decides to grant the petition.

II. Authority and Procedures for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified at 49 U.S.C. chapter 301, authorizes the Secretary of Transportation to exempt motor vehicles, on a temporary basis and under specified circumstances, and on terms the Secretary considers appropriate, from a FMVSS or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA.[9]

The Safety Act authorizes the Secretary to grant, in whole or in part, a temporary exemption to a vehicle manufacturer if the Secretary makes one of four specified findings.[10] The Secretary must also look comprehensively at the request for exemption and find that the exemption is consistent with the public interest and the objectives of the Safety Act.[11]

One of the bases on which an exemption may be granted allows NHTSA to grant an exemption if ''compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.'' [12] This is the basis on which Ford is seeking its exemption.

NHTSA established 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions. The requirements in 49 CFR 555.5 state that the petitioner must set forth the basis of the petition by providing the information required under 49 CFR 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of the Safety Act.

Ford's petition was submitted under 49 CFR 555.6(d), on the basis that Ford is otherwise unable to sell a vehicle whose overall level of safety or impact

[1] 49 U.S.C. 30113(b)(3)(B)(iv).

[2] SAE International J3016_202104 Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles.

[3] Ford Petition at page 1.

[4] *Id.* at page 3.

[5] *Id.* at pages 8 and 25.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] 49 CFR 1.94.

[10] 49 U.S.C. 30113(b)(3).

[11] 49 U.S.C. 30113(b)(3)(A).

[12] 49 U.S.C. 30113(b)(3)(B)(iv).

protection [13] is at least equal to that of a nonexempt vehicle. Petitions submitted under 49 CFR 555.6(d) must include the following information:

(1) A detailed analysis of how the vehicle provides the overall level of safety or impact protection at least equal to that of nonexempt vehicles, including—

(i) A detailed description of how the motor vehicle, if exempted, differs from one that conforms to the standard;

(ii) A detailed description of any safety or impact protection features that the vehicle offers as standard equipment that are not required by the Federal motor vehicle safety or bumper standards;

(iii) The results of any tests conducted on the vehicle demonstrating that it fails to meet the standard, expressed as comparative performance levels;

(iv) The results of any tests conducted on the vehicle demonstrating that its overall level of safety or impact protection exceeds that which is achieved by conformity to the standards.

(v) Other arguments that the overall level of safety or impact protection of the vehicle is at least equal to that of nonexempt vehicles.

(2) Substantiation that compliance would prevent the sale of the vehicle.

(3) A statement whether, at the end of the exemption period, the manufacturer intends to comply with the standard.

(4) A statement that not more than 2,500 exempted vehicles will be sold in the United States in any 12-month period for which an exemption may be granted pursuant to this paragraph. An application for renewal of any exemption shall also include the total number of exempted vehicles sold in the United States under the existing exemption.

III. Ford's Petition

Ford's petition seeks a two-year temporary exemption from parts of each of seven FMVSS to produce 2,500 or fewer exempt vehicles per year.[14] Ford seeks a temporary exemption from portions of the following FMVSS: No. 101, *Controls and Displays*; No. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect*; No. 108, *Lamps, Reflective Devices, and Associated Equipment*; No. 111, *Rear Visibility*; No. 126, *Electronic Stability Control Systems*; No. 135, *Light Vehicle Brake Systems*; and No. 138, *Tire Pressure Monitoring Systems*.

The exemption, if granted, would allow Ford to produce and deploy vehicles that lack certain vehicle controls, telltales, and indicators. Ford states that the subject vehicles would be fleet owned and operated to allow for a controlled deployment and usage on tested, proven roadways in appropriate weather.[15] Ford states that this will allow it to further develop and evaluate its SAE Level 4 ADS feature.[16] When engaged, Ford states the ADS assumes the driving role and performs the entire Dynamic Driving Task (DDT) as defined in SAE J3016.[17]

Because Ford has sought confidential treatment of some aspects of its petition, a redacted version of Ford's petition is included in the docket referenced at the beginning of this notice.

i. Overview of the Vehicles

Ford states that the subject vehicles use a hybrid-electric vehicle (HEV) platform that has been specifically designed and tailored to support mobility services such as ride sharing, ride hailing and package delivery.[18] Ford states that each vehicle will be modified with the components that make up the ADS and are responsible for the core capabilities of motion, planning and execution, which, Ford states, enable the vehicle to drive itself.[19]

Ford states that the vehicle will be designed to operate in both AV Mode and human-driven mode Manual Mode.[20] The vehicle will be equipped with non-traditional driving controls that will only be available in Manual Mode for use by trained operators.[21] Ford states that transitioning between AV Mode and Manual Mode can only be performed by a trained operator while the vehicle is stationary.[22] Ford also states that when the ADS is active, it performs the entire DDT, and removes the need for a human driver.[23]

Ford explains in its petition that the Operational Design Domain (ODD) describes where, when, and under what conditions an ADS-equipped vehicle will be operated.[24] Ford states the vehicle's intended ODD represents a convergence of the vehicle's expected capabilities and projected business model, which includes ride-hailing and goods delivery on urban streets.[25] Ford also states that it expects the vehicles to operate day and night, and from clear conditions up to light rain.[26]

According to Ford, the ADS consists of computing hardware, software, sensors, and map data. Ford states that the vehicles use a 360-degree multi-modal sensing strategy, which includes:

- Near field and far field cameras—high-resolution video image captures for detection, tracking, and classification of static and dynamic objects
- Mid- and long-range radars—sensors that transmit radio waves to detect objects and help determine their range and velocity
- Short- and long range lidars—high-precision sensors that measure the distances to objects using pulses of laser light to visualize the space around it with 360-degree coverage
- Inertial Measurement Unit (IMU) and wheel speed sensors—sensors for determination of orientation and position of the vehicle over time

Ford also states that the ADS uses a high-definition map of the road network and surrounding environment.[27] Ford states that this map, when combined with real-time sensing, allows the vehicle to determine its location within a lane, dynamically route to a destination, and interpret local rules of the road, such as speed limits and traffic controls.[28] Ford states that software analyzes the sensor data to locate vehicles, pedestrians, and other obstacles, predict their future motion, and plan an appropriate vehicle path through the environment.[29] Once a path is determined, motion commands are calculated and then communicated to the vehicle's actuators, such as the engine, transmission, steering, braking, and exterior lighting.[30]

ii. Planned Usage of the Subject Vehicles

Ford states that if it is granted an exemption, it does not plan to sell the vehicles to individual customers.[31] Instead, Ford states that the subject vehicles will be fleet owned and operated.[32] Ford states that this will allow for controlled deployment and usage on tested, proven roadways in appropriate weather.[33] At the end of daily operation, the vehicles will be fueled, cleaned and serviced at a central service depot, and this will also allow for any data downloads or necessary software updates.[34] This approach will, Ford says, ensures the vehicles are adequately maintained and serviced.[35]

[13] Ford is not seeking exemptions from any standards providing performance requirements for impact protection.

[14] Ford Petition at pages 3 and 25.

[15] *Id.* at page 3.

[16] *Id.*

[17] SAE International J3016_202104 Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles.

[18] Ford Petition at 5.

[19] *Id.*

[20] *Id.*

[21] *Id.* at page 8.

[22] *Id.* at page 5.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.* at page 6.

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.* at page 9.

[32] *Id.*

[33] *Id.* at page 8.

[34] *Id.* at page 9.

[35] *Id.*

iii. Fallback Measures

Ford states that when the ADS detects a malfunction affecting the system's ability to perform the DDT, it will perform a fallback maneuver.[36] These maneuvers are categorized by Ford into three levels: Level 1, vehicle completes trip and is scheduled for service; Level 2, vehicle finds a suitable parking location or pulls over to the shoulder and activates hazard warning signal; and Level 3, vehicle activates hazard signal and comes to a controlled stop in the path.[37] Ford states that ADS subsystems conduct their own respective onboard diagnostics, and that safety critical subsystems also monitor the status of other subsystems with which they interface.[38] Ford states that, depending on the severity of a detected malfunction, the vehicle will transition to an appropriate minimal risk condition and the fallback level can be escalated if other faults occur, driving conditions warrant it, or if time thresholds to complete the vehicle response are not met.[39]

A. Safety Showing

In support of the statutory basis cited in its petition for a temporary exemption, Ford asserts that it believes that the requirements from which it is seeking an exemption ''exist due to a human driver's need to operate regulated controls and receive regulated information.'' [40] Ford further asserts that these requirements do not support the safety purpose when the ADS is performing the DDT.[41] This exemption would allow Ford to deploy a vehicle in which most traditional controls and information are not available during the vehicle's AV mode, which Ford asserts, prevents occupants from interfering with the driving task when being executed by the ADS.[42]

Ford seeks exemptions from the following requirements:

i. FMVSS No. 101, *Controls and Displays:* S5.1–S5.4, and S5.6 [43]
ii. FMVSS No. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect:* S3.1.4.1 [44]
iii. FMVSS No. 108, *Lamps, Reflective Devices and Associated Equipment:* S6.61, S6.6.2, S9.1.1, S9.3–S9.8 [45]
iv. FMVSS No. 111, *Rear Visibility:* S6.2.3–S6.2.5 [46]
v. FMVSS No. 126, *Electronic Stability Controls:* S5.3 [47]
vi. FMVSS No. 135, *Light Vehicle Brake Systems:* S5.5, S5.3.1 [48]
vii. FMVSS No. 138, *Tire Pressure Monitoring:* S4.3, S4.4 [49]

For each of the seven FMVSS from which Ford is seeking an exemption, Ford first describes the purpose of the standard and the safety need the requirements meet. Ford then discusses its approach to meeting the safety need. A short description of the rationale Ford provides in its petition to support its assertion that the subject vehicles offer an equivalent level of safety to nonexempt vehicle follows. In the Manual Mode, available to trained operators only, Ford states that the vehicle will comply with all applicable FMVSS. Therefore, the descriptions provided below focus on the description of Ford's safety approach for when the vehicles are operated in AV Mode.

Ford seeks an exemption from the requirements in FMVSS No. 101 that specify the location, identification (symbol, words, etc.), illumination, color, and evaluation conditions of regulated controls, telltales, and indictors.[50] In AV Mode, a few select telltales, indicators, and controls will be presented to occupants, including those related to restraints and occupant protection.[51] Ford states that modules within the vehicle communicate with each other and broadcast the regulated information over the vehicle communication network (*e.g.,* controller area network buses, or CAN), the driver display module receives the information and displays telltales and indicators when triggered.[52] Ford states that by utilizing the vehicle communication network, the ADS directly receives the information the regulated features were meant to communicate to human drivers, and often in greater detail.[53] Ford asserts that the ADS is immediately capable of responding to that information, which may include an appropriate fallback maneuver.[54] Additionally, Ford states that fault information may be communicated to the fleet management system to schedule the vehicle for return to the AV terminal for service or servicing on road.[55] Ford provided a chart in its petition that details Ford's approach for each of the required telltales, indicators, and controls.[56]

Ford's petition seeks an exemption from the requirement in FMVSS No. 102 for identification of shift positions, including the positions in relation to each other and the position selected to be displayed in view of the driver.[57] Ford asserts that the subject vehicle provides an equivalent level of safety to a nonexempt vehicle, stating that in AV Mode, the subject vehicle will be provided with the same information about the transmission shift position as the driver in a nonexempted vehicle.[58] In AV Mode, Ford states that the ADS requests a gear shift via redundant controller area network (CAN) messages to the powertrain control module (PCM).[59] Ford states that it also continually receives two separate CAN messages from the PCM regarding gear state, from which it can determine the actual gear position.[60]

Ford is seeking an exemption from requirements in FMVSS No. 108 because the subject vehicle does not comply with requirements for certain lighting-related controls, indicators, and performance elements when the vehicle is in AV Mode.[61] Ford states that meeting these requirements is not necessary to support the driving task in the absence of a human driver.[62] Further, Ford states that should controls remain accessible to riders, the occupants may select a lighting setting that could adversely affect the ADS's driving action, causing confusion and reducing safety for other road users and/or the ADS-equipped vehicle.[63] Ford asserts that the vehicle provides an equivalent level of safety to a nonexempt vehicle because the ADS system design addresses the driver control and communication requirements by allowing the vehicle's ADS to communicate electronically over the vehicle communication network.[64] Also, according to Ford, the system design meets the regulatory purpose in communicating important safety information to the ADS and it allows the ADS to react immediately to provide safe lighting performance.[65] In addition, should any error or loss of communication be detected, Ford states

[36] *Id.* at page 7.
[37] *Id.* at page 8.
[38] *Id.* at pages 7–8.
[39] *Id.* at page 8.
[40] *Id.* at page 10.
[41] *Id.*
[42] *Id.*
[43] *Id.* at pages 10–15.
[44] *Id.* at page 16.
[45] *Id.* at pages 17–18.
[46] *Id.* at pages 18–20.
[47] *Id.* at pages 20–21.
[48] *Id.* at pages 21–22.
[49] *Id.* at pages 22–24.
[50] *Id.*
[51] *Id* at page 11.
[52] *Id.* at pages 10–11.
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *Id.* at pages 11–15.
[57] *Id.* at page 16.
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *Id.* at page 17.
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Id.*

that the appropriate actions are taken by the vehicle to minimize risks to safety.[66]

Ford is seeking an exemption from the requirements in FMVSS No. 111 that provide response time, linger time, and deactivation requirements for the rearview image performance.[67] Ford states that the rearview image will not be displayed to human occupants, as the ADS is solely responsible for the DDT and the occupants have no responsibility to perform any driving actions.[68] Ford states that in lieu of a traditional review image, while in AV Mode, the ADS utilizes a collection of sensors that meet the intended visibility requirements in FMVSS No. 111, and allow the vehicle to detect the environment during operation at all times.[69] Ford states that while human drivers can potentially be distracted if a rearview 'image' lingers beyond the length of time it takes for a backing maneuver, the ADS will not be distracted.[70] Ford asserts that requiring the ADS to disable its rear sensing outside of backing events would decrease its ability to sense the environment around the vehicle.[71] Ford further asserts that, as a result, the safety intent of the response time and linger time requirements and the deactivation requirement are no longer necessary.[72]

Ford seeks an exemption from the requirement in FMVSS No. 126 that requires an ESC malfunction telltale that must be in front of, and in clear view of the driver.[73] Ford asserts that its approach to use the CAN bus to communicate regulated telltales and indicators and control the applicable regulated features enables the ADS to recognize and respond to information typically provided to a human driver, thereby providing equivalent safety to that of a nonexempted vehicle.[74]

Ford seeks an exemption from the requirements in FMVSS No. 135 that require a foot control for actuating the service brakes and a parking brake that is actuated by either a hand or foot.[75] Ford is also requesting exemption from the requirement for a warning indicator that must be in front of and in clear view of the driver.[76] Ford states that the brake system of the vehicle will continue to meet the braking performance requirements of the standard.[77] Ford further states that its approach to use the CAN bus to communicate regulated telltales and indicators and to control the applicable regulated features enables the ADS to recognize and respond to information typically provided to a human driver.[78] Ford asserts that this approach provides a level of safety equivalent to that of a nonexempted vehicle.[79]

Ford is also seeking an exemption from the requirements in FMVSS No. 138 which require telltales that are ''mounted inside the occupant compartment in front of, and in clear view of, the driver.'' [80] While the ADS is operational, Ford states that the ADS performs the DDT and receives TPMS information electronically through the vehicle communication network.[81] Ford states that it does not intend to provide a telltale to warn vehicle occupants of low pressure or TPMS malfunction because such a warning would not accomplish the stated purpose of FMVSS 138, which is ''to warn drivers of significant under-inflation of tires and the resulting safety problems.''

Ford asserts that the TPMS functions the same in both modes, with the only differences being that telltales are not displayed in AV Mode.[82] Ford asserts that its AV's TPMS design satisfies the purposes of FMVSS 138 S4.3 and S4.4 by communicating the required information directly to the ADS system.[83] Ford further notes that the ADS has additional capabilities to react to the information about tire pressure to help prevent the vehicle from being driven for extended periods on significantly under-inflated tires and describes the vehicle's response to signals indicating that a tire is significantly under-inflated (*i.e.,* more than 25% below the placard pressure, as defined in S4.2(a)) or there is a fault in the TPMS system.[84] Ford asserts that since the ADS-equipped vehicle has the same information as the nonexempted vehicle, and the response to low tire pressure is the same in both vehicles, the level of safety of the two vehicles is equivalent.[85]

B. Public Interest Argument

Ford asserts that granting this petition will allow a progressive deployment to realize the potential of self-driving technology.[86] Ford cites self-driving vehicles as one of the solutions to help enable a new mobility future and states that as they reach scale, self-driving vehicles ''have the potential to transform society through enhanced safety, improved congestion and improved mobility for everyone (including underserved populations such as the elderly and people with disabilities).'' [87]

C. Meetings With Ford

After submitting its petition on July 28, 2021, Ford contacted NHTSA to request a meeting to discuss its petition. NHTSA met with Ford on August 26, September 15, and October 25, 2021. A redacted version of Ford's presentation slides from those meetings is included in the docket referenced at the beginning of this notice.

IV. Agency's Review of Ford's Petition

The agency has not yet made any judgment on the merits of Ford's petition nor on the adequacy of the information submitted. NHTSA will assess the merits of Ford's petition after receiving and considering the public comments to this notice, the petition, and any additional information that the agency receives from Ford.

V. Public Interest Considerations

Section 30113 authorizes NHTSA to grant exemptions that are consistent with the public interest and the Safety Act and authorizes NHTSA to apply appropriate terms to any such grant. Whether granting the exemption is consistent with the public interest and the objectives of the Safety Act are required findings that are no less critical than a discussion of the particular statutory basis on which the exemption is sought (*e.g.,* whether the subject vehicle provides an equivalent level of safety to a nonexempt vehicle). Although NHTSA's mission is primarily a safety mission, NHTSA's authority under section 30113 requires the agency to extend its consideration to issues beyond traffic safety.[88] NHTSA is seeking comment on the agency's consideration of specific matters of

[66] *Id.*
[67] *Id.* at page 19.
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.* at page 21.
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] *Id.* at page 22.
[78] *Id.*
[79] *Id.*
[80] *Id.* at pages 22–23.
[81] *Id.* at page 23.
[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] *Id.*
[86] *Id.* at page 4.
[87] *Id.*
[88] NHTSA stated, in the February 11, 2020 **Federal Register** notice granting an exemption for the first ADS-equipped vehicle to Nuro, that the broad authority to determine whether the public interest and general goals of the Vehicle Safety Act will be served by granting the exemption allows the Secretary to consider many diverse effects of the exemption, including: The overall safety of the transportation system beyond the analysis required in the safety determination; how an exemption will further technological innovation; economic impacts, such as consumer benefits; and environmental effects. (85 FR 7826, 7828).

public interest in both deciding whether granting the exemption is consistent with the public interest and in developing terms and conditions with which the petitioner must comply if its petition is granted.

As the expert agency in automotive safety and the interpretation of its existing standards, NHTSA has significant discretion in making the safety findings required under these provisions. Further, the broad authority to determine whether the public interest and general goals of the Safety Act will be served by granting the exemption allows the agency to consider many diverse effects of the exemption, including: the overall safety of the transportation system beyond the analysis required in the safety determination; how an exemption will further technological innovation; economic impacts, such as consumer benefits; and environmental effects.

ADS vehicles have the potential to benefit our transportation system significantly beyond the analysis required in the safety determination. As NHTSA considers the potentially transformative impact of ADS technology, it is also considering its role in encouraging the use of ADS vehicles in ways that maximize their benefit to society. Specifically, NHTSA is exploring its role and responsibility in considering environmental impacts, accessibility, and equity when an exemption is sought for an ADS-equipped vehicle. Climate, accessibility, and equity, in addition to road safety, are important public interest goals of the Department and NHTSA. NHTSA will also continue to consider how exemptions affect the development of advanced vehicle technologies.

With regard to environmental impacts, NHTSA seeks to learn about the interplay between fuel efficiency and ADS technologies. NHTSA seeks public comment on whether it should adopt reporting requirements when granting part 555 petitions for vehicles with ADS that would allow the agency to better understand the energy use of the vehicles throughout their service life and, possibly, to better assess, and quantify, the environmental impacts of ADS-equipped vehicles. NHTSA is also seeking comment regarding the weight it should give to the environmental impacts of internal combustion engine (ICE) vehicles when deciding whether to grant an exemption to an ICE vehicle moving forward. Finally, NHTSA is seeking comment about whether to seek from entities that receive a grant of a petition information about how, exactly, their vehicles would promote environmental justice.

NHTSA seeks comment on the extent to which accessibility and equity might be considered in either determining whether an exemption is in the public interest or applying appropriate conditions to an exemption as it is granted. Proponents of ADS technology often claim that ADS-equipped vehicles would help advance greater transportation accessibility for persons with disabilities. Ford's petition discusses this potential benefit and specifically references improved mobility for underserved populations, such as elderly persons and persons with disabilities.[89] NHTSA appreciates this potential and appreciates that manufacturers are considering the benefits to underserved populations.

NHTSA is interested in learning more about specific actions that manufacturers and operators of ADS-equipped exempted vehicles are taking to ensure that accessibility and equity goals will be met. For example, we are considering seeking information from entities that receive a grant of a petition about how they ensure that their ride-hailing services comply with any applicable Americans with Disabilities Act (ADA) requirements. NHTSA is also considering seeking information about how many vehicles under a part 555 exemption would be wheelchair accessible. Additionally, NHTSA is interested in what, specifically, the manufacturer would do to ensure access to people with vision disabilities, or to ensure that persons with wheelchairs, walkers, or other mobilities devices, can safely transition from the vehicle to the sidewalk and vice versa. NHTSA seeks comment on these questions about accessibility.

NHTSA is also considering seeking information about how the exempted vehicles would be used to improve accessibility and equity in serving underserved communities. The agency seeks comments on whether an entity that receives a grant of a petition should be required to provide plans about how it intends to ensure that access to its services is equitable in terms of neighborhood, income levels, race and ethnicity, age (etc.), and/or should be required to provide reports of how it achieved those objectives through use of the exempted vehicles. Should the agency require manufacturers granted an exemption to report to NHTSA about how the exempted vehicles will be used to improve accessibility and equity in serving underserved communities? Data reported on these elements would help DOT and NHTSA assess if assumptions about the beneficial societal impacts of ADS-equipped vehicles are bearing out, and if not, why not.

NHTSA is also considering seeking information about the economic impacts of granting a petition. Many advocates of ADS technology argue that deploying ADS-equipped vehicles will increase U.S. jobs and innovation. For example, should the agency seek information about potential job creation and displacement of workers? Should NHTSA seek other information about how the grant would impact investment in the U.S. economy, such as through the generation of tax revenue or development of intellectual property?

Further, NHTSA seeks comments on whether the agency should consider additional matters of public interest in developing terms and conditions with which a part 555 petitioner must comply if its petition were granted. To the extent that you believe other areas should be considered, please tell us how we can best promote the public interest through the exercise of our discretion in granting exemptions and establishing terms and conditions to such exemptions.

VI. Statement on Terms

Section 30113 authorizes the Secretary, NHTSA by delegation, to condition the grant of a temporary exemption ''on terms [NHTSA] considers appropriate.'' [90] The agency's authority to set terms is broad. It is not limited solely to terms and conditions relevant to its specific determination. Instead, this provision allows the agency to set terms that would allow NHTSA to collect information about the exempted vehicles that would service the public interest, such as information concerning the performance of the ADS.[91]

Once a manufacturer receives a temporary exemption from the prohibitions of 49 U.S.C. 30112(a)(1), NHTSA can affect the use of those vehicles produced pursuant to the exemption through the terms in partially or fully granting the exemption or as it exercises its enforcement authority (*e.g.,* its safety defect authority). The agency's authority to set terms is broad. Since the terms would be the primary means of monitoring and affecting the operation of the exempted vehicles, the agency would carefully consider whether to establish terms and what types of terms to establish if it were to grant a petition. The manufacturer would need to agree to abide by the terms set for that

[89] *Id.*

[90] 49 U.S.C. 30113(b)(1) (delegation of authority at 49 CFR 1.95).

[91] 85 FR 7826, 7840 (February 11, 2020).

exemption in order to begin and continue producing vehicles pursuant to that exemption.

Due to the novel nature of ADS technology and NHTSA's interest in better understanding the safety and utility of ADS-equipped vehicles, if the petition were granted in whole or in part, the agency anticipates applying conditions to the grant.

NHTSA exercised its ability to apply a variety of terms when it granted Nuro's petition for the first ADS-equipped vehicle exempted under part 555.[92] The terms NHTSA chose were designed to enhance the public interest and included post-crash reporting, periodic reporting, terms concerning cybersecurity, and certain general requirements. NHTSA seeks comment on whether the agency should apply the same type of conditions, and others, to Ford if NHTSA decides to grant its petition.

NHTSA will carefully consider whether to establish terms and what types of terms to establish if it were to grant Ford's petition. If Ford's petition were granted, Ford would need to agree to abide by the terms set for that exemption in order to begin and continue producing vehicles pursuant to that exemption. Nothing in either the statute or implementing regulations limits the application of these terms to the period during which the exempted vehicles are produced. NHTSA could set terms that continue to apply to the vehicles throughout their normal service life if it deems that such application is necessary to be consistent with the Safety Act.

Thus, if NHTSA were to grant an exemption, in whole or in part, it could establish, for example, reporting terms to ensure a continuing flow of information to the agency throughout the normal service life of the exempted vehicles, not just during the two-year period of exemption. When NHTSA granted Nuro's exemption, NHTSA stated that the terms would apply throughout the useful life of the vehicles. Beyond the two-year exemption period, Ford could be subject to civil penalties for failure to comply with the terms established as a condition for granting the part 555 exemption.

Given the uniqueness of Ford's vehicles, its petition, and public safety concerns, extended reporting may be appropriate. Since only a portion of the total mileage that the vehicles, if exempted, could be expected to travel during their normal service life would have been driven by the end of the exemption period, the data would need to be reported over a longer period of time to enable the agency to make sufficiently reliable judgments. Such judgments might include those made in a retrospective review of the agency's determination about the anticipated safety effects of the exemption.

NHTSA could also establish terms to specify what the consequences would be if the flow of information were to cease or become inadequate during or after the exemption period. Other potential terms could include limitations on vehicle operations (based upon speed, weather, identified Operational Design Domains, road types, ownership, and management, etc.). Conceivably, some conditions could be graduated, *i.e.,* restrictions could be progressively relaxed after a period of demonstrated driving performance. Further, as with data-sharing, it may be necessary to specify that these terms would apply to the exempted vehicles beyond the two-year exemption period.

NHTSA notes that its regulations at 49 CFR part 555 provide that the agency can revoke a part 555 exemption if a manufacturer fails to satisfy the terms of the exemption. NHTSA could also seek injunctive relief.[93]

NHTSA seeks comment on whether the agency should apply the same types of conditions that it applied to Nuro's exemption for ADS-equipped occupantless vehicles. NHTSA seeks comment on not only whether these conditions are appropriate to apply to Ford's exemption request, but also whether there are additional terms that NHTSA should apply. Ford's exemption request differs significantly from Nuro's in that the request is for a passenger vehicle and it is not limited to 25 mph, as in the case of the Nuro vehicle. As such, there are likely to be additional terms that would be appropriate to apply to Ford's exemption, if granted.

Please comment on whether NHTSA should apply the following terms and conditions to a potential grant of Ford's exemption request:

1. Reporting within 24 hours of an exempt vehicle being involved in any crash, to include:[94]

a. The data elements specified in 49 CFR part 563, Event Data Recorders.[95]

b. If the ADS was in control of the vehicle during the event, a detailed timeline of the 30 seconds leading up to the crash, including a detailed read-out and interpretation of all sensors in operation during that time period, the ADS's object detection and classification output, and the vehicle actions taken (*i.e.,* commands for braking, throttle, steering, etc.).

c. If a human operator took over control of the vehicle prior to the event, a detailed timeline of the 30 seconds leading up to the human operator taking over control, including a detailed read-out and interpretation of all ADS sensors in operation during that time period, the ADS's object detection and classification output, and the vehicle actions taken (*i.e.,* commands for braking, throttle, steering, etc.).

d. If a human operator was in control of the vehicle at any point during or up to 30 seconds before the event, a detailed timeline of any actions the human operator took that affected the crash event, as well as any technical problems that could have contributed to the crash (signal latency, poor field of view, etc.).

e. Any additional information about the event that NHTSA deems pertinent for determining either crash or injury causation, including additional information related to the ADS or remote operator system.

2. Beginning 90 days after the date of the exemption grant, and at an interval of every 90 days thereafter, a report detailing the operation of each exempted vehicle in operation during that time period. This report may provide this information either in aggregate or on a per-vehicle basis, but it must include the following:

a. A calculation of the total miles the vehicle has traveled using the ADS during the report period, and heat maps of the geofenced area in which the vehicle operates to illustrate travel density.

b. Detailed descriptions of any material changes made to the subject vehicle's Operational Design Domain (ODD) or ADS software during the reporting period.

c. Detailed descriptions of any incidents in which any exempted vehicle violated any local or State traffic law, whether operating using the ADS or under human control.

d. Detailed descriptions of any incidents in which the exempt vehicles experienced a sustained acceleration of at least 0.7g on any axis for at least 150 ms, or of any incidents in which the vehicle had an unexpected interaction with humans or other objects (other than crashes that require immediate reporting).

e. Detailed descriptions of all instances in which a public safety official, including law enforcement, attempted to interact with an exempted vehicle, such as to pull it over, or contacted Ford regarding an attempted interaction with an exempted vehicle.

f. Detailed descriptions of any ''minimal risk condition fallback'' events that occurred, even if no crash has occurred. If the event has occurred because the vehicle self-diagnosed a malfunction of a vehicle system, the report must include a detailed description of the cause and nature of the malfunction, and what remedial steps were taken. If the event was caused by the vehicle encountering a

[92] *Id.*

[93] 49 U.S.C. 30163(a).

[94] Ford is currently required to submit reports to NHTSA for crashes involving ADS pursuant to NHTSA Standing General Order (2021–01). More information about the General Order is available on NHTSA's website at *https://www.nhtsa.gov/laws-regulations/standing-general-order-crash-reporting-levels-driving-automation-2-5.*

[95] See Table I-Reported Data Elements and Table II-Reported Data Element Format. 85 FR 78426, 7841 (February 11, 2020).

complex or unexpected driving situation, the report must include a detailed timeline of the ADS's decision-making process that led to the event, including any difficulties the ADS had in detecting and classifying objects.

g. In addition, Ford must make necessary staff available to meet with NHTSA staff quarterly to discuss the status of its deployment program.

3. Ford must have a documented cybersecurity incident response plan that includes its risk mitigation strategies and the incident notification requirements listed below.

a. Ford must cease operations of all exempt vehicles immediately upon becoming aware of any cybersecurity incident involving the exempt vehicles and any systems connected to the exempt vehicles that has the potential to impact the safety of the exempt vehicles.

b. No later than 24 hours after being made aware of a cybersecurity incident, Ford must inform NHTSA's Office of Defects Investigations (ODI) of the incident. Ford must also respond to any additional requests for information from NHTSA on the cybersecurity incident.

c. Prior to resuming its operation of any exempt vehicles following the discovery of a cybersecurity incident, Ford must inform NHTSA of the steps it has taken to patch the vulnerability and mitigate the risks associated with the incident, and receive NHTSA approval to resume operation.

4. Ford must be capable of issuing a ''stop order'' that causes all deployed exempted vehicles to, as quickly as possible, cease operations in a safe manner, in the event that NHTSA or Ford determines that the exempted vehicles present an unreasonable or unforeseen risk to safety.

5. Ford must coordinate any planned deployment of the exempted vehicles or change to the ADS/ODD with State and local authorities with jurisdiction over the operation of the vehicle as required by the laws or regulations of that jurisdiction.

6. The exempted vehicles must comply with all State and local laws and requirements at all times while in operation. Each vehicle must be duly permitted, if applicable, and authorized to operate within all properties and upon all roadways traversed.

7. Ford must maintain ownership and operational control over the exempted vehicle that are built pursuant to this exemption for the life of those vehicles.

8. Ford must create and maintain a hotline or other method of communication for the public and Ford employees to directly communicate feedback or potential safety concerns about the exempted vehicles to the company.

9. If there are other categories of data that should be considered, please identify them and the purposes for which they would be useful to the agency in carrying out its responsibilities under the Safety Act.

10. If the agency were to require the reporting of data, for what period should the agency require it to be reported—the two-year exemption period or the vehicles' entire normal service life?

11. Given estimates that vehicles with ADS would generate terabytes of data per vehicle per day, how should the need for data be appropriately balanced with the burden on manufacturers of providing and maintaining it and the ability of the agency to absorb and use it effectively?

12. As explained in the section above, NHTSA has broad authority to determine whether the public interest and general goals of the Safety Act will be served by granting an exemption. NHTSA seeks to understand the many diverse effects of the exemption, including: the overall safety of the transportation system beyond the analysis required in the safety determination; how an exemption will further technological innovation; whether the exemption will address transportation accessibility and equity; economic impacts, such as consumer benefits; and environmental effects.

13. With regard to environmental impacts, how should NHTSA use the part 555 exemptions to learn about the interplay between fuel efficiency and ADS technologies? Should the agency adopt reporting requirements that would allow the agency to better understand the energy use of the vehicles throughout their service life and possibly better assess, and quantify, the environmental impacts of ADS-equipped vehicles? Should NHTSA require an entity whose petition has been granted to provide data about, for example, how often and how far its vehicles are driving around unoccupied vs. occupied? Is there other information related to the environmental consequences and effects of the vehicles covered by the petition that NHTSA should require from entities granted an exemption?

14. Should NHTSA consider the environmental impacts of ICE vehicles when deciding whether granting an exemption to an ICE vehicle is in the public interest?

15. How should NHTSA consider accessibility in applying appropriate conditions to an exemption if it were granted? As noted above, many proponents of ADS technology often claim that ADS-equipped vehicles could help advance greater transportation accessibility for persons with disabilities. Should NHTSA impose conditions on grants of part 555 exemptions to learn more about specific actions that manufacturers and operators of ADS-equipped exempted vehicles are planning, or have taken, to further the attainment of accessibility goals? Should NHTSA seek information from manufacturers granted an exemption as to how they ensure that their ride-hailing services comply with any applicable Americans with Disabilities Act (ADA) requirements, how many vehicles would be wheelchair accessible, how they reach people with disabilities to offer access to ride sharing services, or whether the exempt vehicles provide other accommodations for individuals with disabilities, such as communication and/or human-machine interface (HMI) features designed for individuals with sensory disabilities (such as sight or hearing) or cognitive disabilities? Should NHTSA require grantees to report on efforts, such as research or community outreach, that the manufacturer is planning, or has taken, to increase the likelihood that accessibility goals will be met? Comments are requested on whether there is other information related to accessibility that NHTSA should require from an entity when granting its petition.

16. How should NHTSA consider equity in applying appropriate conditions to an exemption if it were granted? For example, should NHTSA require entities receiving a grant of their petition to report how the exempted vehicles were used to improve accessibility and equity in serving underserved communities? Should such an entity be required to provide plans about how it intends to ensure that access to its services is equitable in terms of neighborhood, income levels, race and ethnicity, age (etc.), and/or provide reports of how it achieved those objectives through use of the exempted vehicles? Should entities receiving a petition grant be required to report on barriers they encountered to deploying ADS-equipped vehicles in underserved communities and how those barriers could be overcome? Should such an entity be required to provide demographic data about its services, or report on efforts, such as research or community outreach, that the manufacturer is planning or has taken to ensure better that equity goals will be met? Comments are requested on whether there is other information related to equity that NHTSA should require when granting a petition.

17. How should NHTSA consider economic impacts when applying appropriate conditions to an exemption if it were granted?

VII. Public Participation

A. Request for Comment and Comment Period

The agency seeks comment from the public on the merits of Ford's petition for a temporary exemption from portions of seven FMVSS. NHTSA is also seeking comment on the potential types of terms the agency should set if the agency decides to grant Ford's petition.

NHTSA is providing a 30-day comment period. After considering public comments and other available information, NHTSA will publish a notice of final action on the petition in the **Federal Register**.

B. Instructions for Submitting Comments

How long do I have to submit comments?

Please see **DATES** section at the beginning of this document.

How do I prepare and submit comments?

- Your comments must be written in English.
- To ensure that your comments are correctly filed in the Docket, please include the Docket Number shown at the beginning of this document in your comments.

• If you are submitting comments electronically as a PDF (Adobe) File, NHTSA asks that the documents be submitted using the Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submissions. Comments may be submitted to the docket electronically by logging onto the Docket Management System website at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

• You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://www.bts.gov/programs/statistical_policy_and_research/data_quality_guidelines.*

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you must submit your request directly to NHTSA's Office of the Chief Counsel. Requests for confidentiality are governed by part 512. NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under part 512. If you would like to submit a request for confidential treatment, you may email your submission to Dan Rabinovitz in the Office of the Chief Counsel at *Daniel.Rabinovitz@dot.gov* or you may contact Dan for a secure file transfer link. At this time, you should not send a duplicate hardcopy of your electronic CBI submissions to DOT headquarters. If you claim that any of the information or documents provided to the agency constitute confidential business information within the meaning of 5 U.S.C. 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with part 512, to the Office of the Chief Counsel. Your request must include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR 512.8) and a certificate, pursuant to § 512.4(b) and part 512, appendix A. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket at the address given above.

Will the Agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How can I read the comments submitted by other people?

You may see the comments on the internet. To read the comments on the internet, go to *https://www.regulations.gov.* Follow the online instructions for accessing the dockets.

Please note that, even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Authority: 49 U.S.C. 30113 and 49 U.S.C. 30166; delegations of authority at 49 CFR 1.95.

Issued in Washington, DC, under authority delegated pursuant to 49 CFR 1.95.

Steven S. Cliff,

Administrator.

[FR Doc. 2022–15556 Filed 7–20–22; 8:45 am]

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[Docket No. TTB–2022–0002]

Proposed Information Collections; Comment Request (No. 87)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB); Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this document.

DATES: We must receive your written comments on or before September 19, 2022.

ADDRESSES: You may send comments on the information collections described in this document using one of these two methods:

• *Internet*—To submit comments electronically, use the comment form for this document posted on the ''*Regulations.gov*'' e-rulemaking website at *https://www.regulations.gov* within Docket No. TTB–2022–0002.

• *Mail*—Send comments to the Paperwork Reduction Act Officer, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

Please submit separate comments for each specific information collection described in this document. You must reference the information collection's title, form or recordkeeping requirement number (if any), and OMB control number in your comment.

You may view copies of this document, the relevant TTB forms, and any comments received at *https://www.regulations.gov* within Docket No. TTB–2022–0002. TTB has posted a link to that docket on its website at *https://www.ttb.gov/rrd/information-collection-notices.* You also may obtain paper copies of this document, the listed forms, and any comments received by contacting TTB's Paperwork Reduction Act Officer at the addresses or telephone number shown below.

FOR FURTHER INFORMATION CONTACT: Michael Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; 202–453–1039, ext. 135; or complete the Regulations and Rulings Division contact form at *https://www.ttb.gov/contact-rrd.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of a continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections described below, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this document will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether an information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden 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 the requested information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information has a valid OMB control number.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms, letterhead applications or notices, recordkeeping requirements, questionnaires, or surveys:

OMB Control No. 1513–0011

Title: Formula and/or Process for Article Made with Specially Denatured Spirits.

TTB Form Number: TTB F 5150.19.

Abstract: In general, under the Internal Revenue Code (IRC) at 26 U.S.C. 5214, distilled spirits used in the manufacture of nonbeverage articles are not subject to Federal excise tax, and, under the IRC at 26 U.S.C. 5273, persons who intend to produce such articles using specially denatured distilled spirits (SDS) must obtain prior approval of their formulas and manufacturing processes. For medicinal preparations and flavoring extracts intended for internal human use, that section also prohibits SDS from remaining in the finished articles. Under those IRC authorities, the Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations in 27 CFR part 20 require persons to file formula and process approval requests for articles made with SDS using form TTB F 5150.19. TTB uses the collected information to ensure that the relevant provisions of the IRC are appropriately applied.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is decreasing the estimated number of annual respondents, responses, and burden hours associated with this collection, but is increasing the average number of responses per respondent.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 110.
- *Average Responses per Respondent:* 1.6.
- *Number of Responses:* 176.
- *Average Per-response Burden:* 44 minutes.
- *Total Burden:* 129 hours.

OMB Control No. 1513–0024

Title: Report—Export Warehouse Proprietor.

TTB Form Number: TTB F 5220.4.

Abstract: In general, under chapter 52 of the IRC, tobacco products and cigarette papers and tubes manufactured in, or imported into, the United States are subject to excise tax, while such products removed for export are not subject to that tax. The IRC provides for the establishment of export warehouses, which are bonded warehouses for the storage of tobacco products or cigarette papers or tubes, upon which the internal revenue tax has not been paid, and processed tobacco, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States. See 26 U.S.C. 5702(h). To account for the receipt, storage, and disposition of untaxed tobacco products and processed tobacco, the IRC at 26 U.S.C. 5722 requires export warehouse proprietors to provide reports as prescribed by regulation. Under that authority, the TTB regulations in 27 CFR part 44 require such proprietors to file a monthly report using TTB F 5220.4, listing the amount of tobacco products, cigarette papers and tubes, and processed tobacco received, removed, lost, or unaccounted for during a given month. TTB uses the collected information to ensure that the relevant provisions of the IRC are appropriately applied and to detect diversion of untaxed products.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is decreasing the number of annual respondents, responses, and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 70.
- *Average Responses per Respondent:* 12 (one per month).
- *Number of Responses:* 840.
- *Average Per-response Burden:* 1 hour.
- *Total Burden:* 840 hours.

OMB Control No. 1513–0035

Title: Inventory—Export Warehouse Proprietor.

TTB Form Number: TTB F 5220.3.

Abstract: In general, under chapter 52 of the IRC, tobacco products and cigarette papers and tubes manufactured in, or imported into, the United States are subject to excise tax, while such products removed for export are not. The IRC provides for the establishment of export warehouses, which are bonded warehouses for the storage of tobacco products or cigarette papers or tubes, upon which the internal revenue tax has not been paid, and processed tobacco, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States. See 26 U.S.C. 5702(h). To account for such products, the IRC, at 26 U.S.C. 5721, requires export warehouse proprietors to take an inventory of all tobacco products, cigarette papers and tubes, and processed tobacco on hand at the commencement of business, the conclusion of business, and at other times as prescribed by regulation. Under that authority, the TTB regulations in 27 CFR part 44 require such proprietors to make opening and closing inventories, and to make inventories when certain changes in ownership and control of the business occur and when directed by TTB. Such inventories must be made using TTB F 5220.3. TTB uses the collected information to ensure that the relevant provisions of the IRC are appropriately applied, to establish a contingent excise tax liability on products not yet exported, and to detect diversion of untaxed articles.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is decreasing the number of annual respondents, responses, and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 70.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 70.
- *Average Per-response Burden:* 5 hours.
- *Total Burden:* 350 hours.

OMB Control No. 1513–0039

Title: Distilled Spirits Plants Warehousing Records (TTB REC 5110/02), and Monthly Report of Storage Operations.

TTB Form Number: TTB F 5110.11.

TTB Recordkeeping Number: TTB REC 5110/02.

Abstract: The IRC at 26 U.S.C. 5207 requires distilled spirits plant (DSP) proprietors to maintain records and submit reports of production, storage, denaturation, and processing activities as the Secretary of the Treasury (the Secretary) requires by regulation. Under that IRC authority, the TTB regulations in 27 CFR part 19 require DSP proprietors to keep certain records regarding their warehousing operations. The regulations also require DSP proprietors to submit a summary report of their storage operations to TTB on a monthly basis using form TTB F 5110.11. Under the IRC at 26 U.S.C. 5005(c), DSP proprietors remain liable for the excise tax for all stored distilled spirits, and, as such, TTB uses the collected information to ensure that the relevant provisions of the IRC are appropriately applied.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates resulting from continued growth in the number of distilled spirits plants in the United States, TTB is increasing the number of annual respondents, responses, and total burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 4,800.
- *Average Responses per Respondent:* 12 (one per month).
- *Number of Responses:* 57,600.
- *Average Per-response Burden:* 2 hours.
- *Total Burden:* 115,200 hours.

OMB Control No. 1513–0045

Title: Distilled Spirits Plants—Excise Taxes (TTB REC 5110/06).

TTB Recordkeeping Number: TTB REC 5110/06.

Abstract: Under chapter 51 of the IRC, distilled spirits produced or imported into the United States are subject to Federal excise tax, which is determined at the time the spirits are withdrawn from bond and which is paid by return, subject to regulations prescribed by the Secretary. In addition, a credit may be taken against that tax for the portion of a distilled spirits product's alcohol content derived from wine or flavors. The TTB regulations in 27 CFR parts 19 and 26 require distilled spirits excise taxpayers to keep certain records in support of the information provided on their excise tax returns, including information on the distilled spirits removed from their premises and the products' applicable tax rates, as well as records related to nontaxable removals, shortages, and losses. TTB uses the collected information to ensure that the relevant provisions of the IRC are appropriately applied, verify claims for refunds or remission of tax, and account for the transfer of certain distilled spirits excise taxes to the governments of Puerto Rico and the U.S. Virgin Islands.

Current Actions: There are no program changes associated with this information collection at this time, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates resulting from continued growth in the number of distilled spirits plants in the United States, TTB is increasing the number of annual respondents, responses, and total burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 4,800.
- *Average Responses per Respondent:* 14.
- *Number of Responses:* 67,200.
- *Average Per-response Burden:* 1 hour.
- *Total Burden:* 67,200.

OMB Control No. 1513–0046

Title: Formula for Distilled Spirits under the Federal Alcohol Administration Act.

TTB Form Number: TTB F 5110.38.

Abstract: The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) authorizes the Secretary to issue regulations regarding the labeling of alcohol beverages to prevent consumer deception and provide the consumer with adequate information as to the identity and quality of such products, which, for certain distilled spirits beverage products, may require a statement of composition. Additionally, the IRC at 26 U.S.C. 5222(c), 5223, and 5232, authorizes the Secretary to issue regulations regarding the removal and addition of extraneous substances to distilling materials or the redistillation of domestic and imported spirits. Under those statutory authorities, the TTB regulations in 27 CFR parts 5, 19, and 26 require proprietors to obtain approval of formulas for distilled spirits beverage products when operations such as blending, mixing, purifying, refining, compounding, or treating change the character, composition, class, or type of the spirits. In place of TTB's general alcohol beverage formula form, approved under control number OMB No. 1513–0122, respondents may use TTB F 5110.38 to list ingredients, and, if required, the process used to produce the distilled spirits product in question. TTB uses the collected information to determine if such products meet the applicable statutory and regulatory requirements.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 50.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 50.
- *Average Per-response Burden:* 1 hour.
- *Total Burden:* 50 hours.

OMB Control No. 1513–0063

Title: Stills—Notices, Registration, and Records (TTB REC 5150/8).

TTB Recordkeeping Number: TTB REC 5150/8.

Abstract: The IRC, at 26 U.S.C. 5101 and 5179, allows the Secretary to issue regulations to require manufacturers of stills to submit notices regarding the manufacture and setup of stills, and it requires all persons who possess or have custody of a still to register it with the Secretary and provide information as to its location, type, capacity, ownership, and the purpose for which it will be used. Under those authorities, the TTB regulations in 27 CFR part 29 require still manufacturers to provide certain notices and keep certain records regarding the manufacture and setup of stills. Those regulations also require still owners to register their stills with TTB and provide certain notices and keep certain records regarding such

registrations and changes in ownership or location of stills. Respondents may meet the prescribed record requirements by keeping usual and customary business records. TTB uses the required information to ensure that the relevant provisions of the IRC are appropriately applied.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the number of annual respondents, responses, and burden hours for this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 20.
- *Average Responses per Respondent:* 4 (on occasion).
- *Number of Responses:* 80.
- *Average Per-response Burden:* 1 hour.
- *Total Burden:* 80 hours.

OMB Control No. 1513–0066

Title: Retail Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices (TTB REC 5170/03).

TTB Recordkeeping Number: TTB REC 5170/03.

Abstract: Under the authority of the IRC at 26 U.S.C. 5122, the TTB regulations in 27 CFR part 31 require retail alcohol beverage dealers to keep records showing the quantities of all distilled spirits, wines, and beer received, including information on from whom and when the products were received. Those regulations also require dealers to keep records of all alcohol beverage sales of 20 or more wine gallons made to the same person at the same time. At the respondent's discretion, those records may consist of usual and customary business records such as commercial invoices or a book containing the required information, maintained at their place of business or at an alternate location under the dealer's control approved by TTB. Additionally, under the IRC at 26 U.S.C. 5123, the TTB regulations require retail dealers to maintain those records for at least 3 years, available for TTB inspection during business hours. TTB uses the required information to ensure that the relevant provisions of the IRC are appropriately applied.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 455,000.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 455,000.
- *Average Per-response and Total Burden:* None. Per the Office of Management and Budget (OMB) regulations at 5 CFR 1320.3(b)(2), regulatory requirements to keep usual and customary business records impose no added burden on respondents.

OMB Control No. 1513–0068

Title: Records of Operations—Manufacturer of Tobacco Products or Processed Tobacco (TTB REC 5210/1).

TTB Recordkeeping Number: TTB REC 5210/1.

Abstract: The IRC at 26 U.S.C. 5741 requires manufacturers of tobacco products, cigarette papers or tubes, or processed tobacco to keep records as the Secretary prescribes by regulation. Under that authority, the TTB regulations in 27 CFR part 40 require such manufacturers to keep daily records regarding materials received and products manufactured, removed, returned, consumed, transferred, destroyed, lost, or disclosed as shortages. Those regulations provide that manufacturers may use usual and customary commercial records, where possible, to keep and maintain the required data, which must be maintained for 3 years, subject to TTB inspection upon request. TTB uses the required information to ensure that industry members comply with the tax provisions of the IRC regarding tobacco products and processed tobacco.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits; and Individuals or households.

Estimated Annual Burden

- *Number of Respondents:* 235.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 235.
- *Average Per-response Burden:* 2 hours.
- *Total Burden:* 470 hours.

OMB Control No. 1513–0070

Title: Tobacco Export Warehouse—Records of Operations (TTB REC 5220/1).

TTB Recordkeeping Number: TTB REC 5220/1.

Abstract: In general, chapter 52 of the IRC imposes Federal excise tax on all tobacco products and cigarette papers and tubes manufactured in, or imported into, the United States, while exempting such products removed for export, as well as all processed tobacco, from that tax. Export warehouses receive and store such non-taxpaid products until they are removed without payment of tax for export to a foreign country, Puerto Rico, or the U.S. Virgin Islands, or for consumption beyond the internal revenue laws of the United States. As authorized by the IRC at 26 U.S.C. 5741, the TTB regulations in 27 CFR part 44 require export warehouse proprietors to keep usual and customary business records showing the date, kind, quantity, and manufacturer of all tobacco products, cigarette papers and tubes, and processed tobacco received, removed, transferred, destroyed, lost, or returned to the manufacturer or to a customs bonded warehouse proprietor. TTB uses the collected information to ensure untaxpaid products are accounted for and tracked, and to detect diversion of untaxed products.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is decreasing the number of annual respondents, responses, and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 70.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 70.
- *Average Per-response and Total Burden:* None. Per the OMB regulations at 5 CFR 1320.3(b)(2), regulatory requirements to keep usual and customary business records impose no additional burden on respondents.

OMB Control No. 1513–0072

Title: Applications and Notices—Manufacturers of Nonbeverage Products (TTB REC 5530/1).

TTB Recordkeeping Number: TTB REC 5530/1.

Abstract: In general, the IRC at 26 U.S.C. 5001 imposes Federal excise tax

on each proof gallon of distilled spirits produced in or imported into the United States. However, under the IRC at 26 U.S.C. 5111–5114, persons using distilled spirits to produce certain nonbeverage products (medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume) may claim drawback (refund) of all but $1.00 per proof gallon of the Federal excise tax paid on the distilled spirits used to make such products, subject to regulations issued by the Secretary ''to secure the Treasury against frauds.'' Under those IRC authorities, the TTB regulations in 27 CFR part 17 require manufacturers to submit certain applications and notices to TTB regarding their use of distilled spirits in the production of nonbeverage products eligible for drawback. Such applications, which require TTB approval, cover nonbeverage activities that present significant jeopardy to the revenue, while notices, which do not require TTB approval, cover activities that present less jeopardy to the revenue. TTB uses the collected information to ensure that TTB provides drawback of tax only to industry members eligible for such drawback under the IRC.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits; and Individuals or households.

Estimated Annual Burden

- *Number of Respondents:* 350.
- *Average Responses per Respondent:* 2.
- *Number of Responses:* 700.
- *Average Per-response Burden:* 0.5 hour.
- *Total Burden:* 350 hours.

OMB Control No. 1513–0077

Title: Records of Things of Value to Retailers, and Occasional Letter Reports from Industry Members Regarding Information on Sponsorships, Advertisements, Promotions, Etc., under the FAA Act.

Abstract: The FAA Act at 27 U.S.C. 205 generally prohibits alcohol beverage producers, importers, or wholesalers from offering inducements to alcohol retailers—giving things of value or conducting certain types of advertisements, promotions, or sponsorships—unless such an action is specifically exempted by regulation. Under that authority, the TTB regulations in 27 CFR part 6, ''Tied-House,'' describe exceptions to the general FAA Act inducement prohibition and also describe things that are considered to be ''of value'' for purposes of determining whether an inducement has been offered. In general, those regulations require alcohol beverage industry members to keep records of the cost and recipients of any things of value furnished to retailers. Industry members may use usual and customary business records for this purpose. Additionally, the part 6 regulations provide that TTB may require, as part of a trade practice investigation, a letterhead report from an alcohol industry member regarding any advertisements, promotions, sponsorships, or other activities conducted by, on behalf of, or benefiting the industry member. TTB uses the collected information to ensure compliance with the FAA Act's trade practice prohibitions and exceptions.

Current Actions: There are no program changes to this collection, and TTB is submitting it for extension purposes only. However, as for adjustments, due to changes in agency estimates resulting from an increase in the number of alcohol industry members, TTB is increasing this collection's estimated number of annual recordkeeping respondents and responses, but there is no corresponding increase in burden hours as respondents keep the required information using usual and customary business records.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 83,000.
- *Average Responses per Respondent:* 1 (one response per respondent for ongoing recordkeeping, and 1 response for 10 respondents for reporting).
- *Number of Responses:* 83,010.
- *Average Per-response Burden:* For recordkeeping, under the OMB regulations at 5 CFR 1320.3(b)(2), there is no per-respondent burden for the keeping of the usual of customary business records required under this collection. For the 10 respondents required by TTB to submit letterhead reports, the estimated burden is 8 hours per response.
- *Total Burden:* 80 hours.

OMB Control No. 1513–0078

Title: Applications for Permit to Manufacture or Import Tobacco Products or Processed Tobacco or to Operate an Export Warehouse and Applications to Amend Such Permits.

TTB Form Numbers: TTB F 5200.3, TTB F 5200.16, TTB F 5230.3, and TTB F 5230.5.

Abstract: The IRC at 26 U.S.C. 5712 and 5713 requires that importers and manufacturers of tobacco products or processed tobacco and export warehouse proprietors apply for and obtain a permit before engaging in such operations, or at such other times, as the Secretary may prescribe by regulation. In addition, 26 U.S.C. 5712 sets forth certain circumstances under which a permit application may be denied, such as circumstances in which an applicant is determined to be not likely to maintain operations in compliance with the IRC by reason of business experience, financial standing, or trade connections or by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes. Under those authorities, the TTB regulations in 27 CFR parts 40, 41, and 44 require tobacco industry members to submit applications using the prescribed TTB forms for new permits or, under certain circumstances, amended permits. Applicants use those forms and any required supporting documents to provide information about themselves and their business, including its location, organization, financing, and investors. Once TTB issues a permit, the permittee must retain a copy of the application package for as long as they continue in business, available for TTB inspection upon request. TTB uses the collected information to ensure that only applicants eligible for a TTB permit obtain one.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits. State, local, or tribal governments.

Estimated Annual Burden

- *Number of Respondents:* 470.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 470.
- *Average Per-response Burden:* 1.34 hours.
- *Total Burden:* 630 hours.

OMB Control No. 1513–0080

Title: Distilled Spirits Plant Equipment and Structures (TTB REC 5110/12).

TTB Recordkeeping Number: TTB REC 5110/12.

Abstract: The IRC at 26 U.S.C. 5178 and 5180 authorizes the Secretary to issue regulations regarding the location, construction, and arrangement of distilled spirits plants (DSPs), the identification of DSP structures, equipment, pipes, and tanks, and the posting of an exterior sign at their place of business. The IRC at 26 U.S.C. 5206 also requires DSP proprietors to mark containers of distilled spirits, subject to regulations prescribed by the Secretary. The TTB regulations concerning the identification of DSP plants, equipment, structures, and bulk containers are contained in 27 CFR part 19. Those regulations describe the required exterior identification sign, and the identification signs or marks required on DSP structures, cookers, fermenters, stills, tanks, and other major equipment. The regulations also require tank cars and trucks used by DSPs as bulk conveyances for distilled spirits to be permanently and legibly marked with identifying information and capacity. The information set forth under this information collection is necessary to protect the revenue and facilitate inspections, as TTB uses the required signs and marks to identify the location, use, and capacity of a DSP's structures, equipment, and conveyances.

Current Actions: There are no program changes associated with this information collection at this time, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates resulting from continued growth in the number of distilled spirits plants in the United States, TTB is increasing the number of annual respondents, responses, and total burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 4,800.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 4,800.
- *Average Per-response and Total Burden:* None. The placing of the required signs and marks by DSP proprietors is a usual and customary business practice undertaken regardless of any regulatory requirement to do so. As such, under the OMB regulations at 5 CFR 1320.3(b)(2), there is no additional respondent burden associated with this information collection.

OMB Control No. 1513–0084

Title: Labeling of Sulfites in Alcohol Beverages.

Abstract: The U.S. Food and Drug Administration (FDA) has determined that sulfating agents are human allergens, which can have serious health implications for persons who are allergic to sulfites. As a result, FDA regulations require food labels to declare the presence of sulfites if there are 10 parts per million (ppm) or more of a sulfating agent in a finished food product. Under the FAA Act at 27 U.S.C. 205(e), the Secretary is authorized to issue regulations requiring alcohol beverage labels to provide ''adequate information'' to consumers regarding the identity and quality of such products. Under that FAA Act authority and consistent with FDA's food labeling requirements, the TTB alcohol beverage labeling regulations in 27 CFR part 4 (wine), part 5 (distilled spirits), and part 7 (malt beverages) require a declaration of sulfites on the labels of domestic and imported alcohol beverages when sulfites are present in such products at levels of 10 or more ppm. This label disclosure is necessary to protect sulfite-sensitive consumers from products that potentially could be harmful to them.

Current Actions: There are no program changes to this information collection, and TTB is submitting it for extension purposes only. As for adjustments, TTB is increasing the number of respondents, responses, and burden hours associated with this information collection due changes in agency estimates resulting from growth in the number of alcohol beverage producers and importers, as well as growth in the number of alcohol products subject to this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 30,570.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 30,570.
- *Average Per-response Burden:* 40 minutes.
- *Total Burden:* 20,380.

OMB Control No. 1513–0097

Title: Notices Relating to Payment of Firearms and Ammunition Excise Tax by Electronic Funds Transfer.

Abstract: Under the IRC at 26 U.S.C. 6302, TTB collects the firearms and ammunition excise tax imposed by 26 U.S.C. 4181 on the basis of a return that taxpayers file on a quarterly basis. That section also authorizes the Secretary to issue regulations concerning the payment of taxes by electronic funds transfer (EFT). Under the TTB regulations in 27 CFR part 53, persons who elect to begin or discontinue payment of firearms and ammunition excise taxes by EFT must submit a written notice to TTB regarding such actions. TTB uses those notifications to anticipate and monitor firearms and ammunition excise tax payments to ensure compliance with Federal law.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to a change in agency estimates, TTB is increasing the per-response and total burden for this collection. The number of respondents and responses remain the same as previously reported.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 10.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 10.
- *Average Per-response Burden:* 24 minutes.
- *Total Burden:* 4 hours.

OMB Control No. 1513–0098

Title: Supporting Data for Nonbeverage Drawback Claims.

TTB Form Number: TTB F 5154.2.

Abstract: Under the IRC at 26 U.S.C. 5111–5114 and 7652(g), persons using distilled spirits to produce medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume may claim drawback (refund) of all but $1.00 per proof gallon of the Federal excise tax paid on the distilled spirits used to make such nonbeverage products, subject to regulations prescribed by the Secretary. As required by the TTB regulations in 27 CFR parts 17 and 26, when submitting nonbeverage product drawback claims to TTB, respondents are required to report certain supporting data regarding the distilled spirits used and the products produced, using form TTB F 5154.2. TTB uses the collected information to ensure that drawback of Federal excise tax is provided only to eligible entities.

Current Actions: There are no program changes to this information collection, and TTB is submitting it for extension purposes only. As for

adjustments, due to changes in agency estimates, TTB is decreasing the number of respondents, responses, and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 500.
- *Average Responses per Respondent:* 4 (on occasion)
- *Number of Responses:* 2,000.
- *Average Per-response Burden:* 1 hour.
- *Total Burden:* 2,000.

OMB Control No. 1513–0106

Title: Record of Operations—Importer of Tobacco Products or Processed Tobacco.

Abstract: The IRC at 26 U.S.C. 5741 requires all manufacturers and importers of tobacco products, processed tobacco, and cigarette papers and tubes, and all export warehouse proprietors to keep records as the Secretary prescribes by regulation. Under that authority, the TTB regulations in 27 CFR part 41 require importers of tobacco products or processed tobacco to maintain the usual and customary business showing the receipt and disposition of imported tobacco products or processed tobacco. TTB uses the collected information to ensure that importers' activities comply with the IRC and that processed tobacco, which is not taxed, is not diverted to taxable tobacco product manufacturing.

Current Actions: There are no program changes to this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to a change in agency estimates, TTB is decreasing the estimated number of respondents and responses to this collection. However, there is no corresponding increase in the burden hours for this collection as it consists of usual and customary business records, which impose no additional burden on respondents per the OMB regulations at 5 CFR 1320.3(b)(2).

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 350.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 350.
- *Average Per-response and Total Burden:* None. Per the Office of Management and Budget (OMB) regulations at 5 CFR 1320.3(b)(2), regulatory requirements to keep usual and customary business records impose no added burden on respondents).

Amy R. Greenberg,

Director, Regulations and Rulings Division.

[FR Doc. 2022–15620 Filed 7–20–22; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before August 22, 2022 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202) 622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Community Development Financial Institutions Fund (CDFI Fund)

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 1559–0041.

Type of Review: Reinstatement of a previously approved information collection request.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. Qualitative feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Affected Public: Businesses and other organizations.

Estimated Number of Respondents: 10,000.

Frequency of Response: Once.

Estimated Total Number of Annual Responses: 10,000.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 60.

Authority: 44 U.S.C. 3501 et seq.

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2022–15521 Filed 7–20–22; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Government Securities: Call for Large Position Reports

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Notice of call for Large Position Reports.

SUMMARY: The U.S. Department of the Treasury (Treasury) called for the submission of Large Position Reports by entities whose positions in the 1½% Treasury Note of February 2024 equaled or exceeded $5.2 billion as of Thursday, March 24, 2022, or Friday, April 1, 2022.

DATES: Reports must be received by 5:00 p.m. Eastern Time on Monday, July 18, 2022.

ADDRESSES: Reports may be submitted using Treasury's webform (available at *https://www.treasurydirect.gov/instit/statreg/gsareg/LPR-form.htm*). Reports may also be faxed to Treasury at (202) 504–3788 if a reporting entity has difficulty using the webform.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena, Kurt Eidemiller, John Garrison, or Kevin Hawkins; Government Securities Regulations Staff, Department of the Treasury, at 202–504–3632.

SUPPLEMENTARY INFORMATION: In a public announcement issued on July 12, 2022, and in this **Federal Register** notice, Treasury called for Large Position Reports from entities whose positions in the 1½% Treasury Note of February 2024 equaled or exceeded $5.2 billion as of Thursday, March 24, 2022, or Friday, April 1, 2022. Entities must submit separate reports for each reporting date on which their positions equaled or exceeded the $5.2 billion reporting threshold. Entities with positions in this Treasury Note below the reporting threshold are not required to submit Large Position Reports.

This call for Large Position Reports is pursuant to Treasury's large position reporting rules under the Government Securities Act regulations (17 CFR part 420), promulgated pursuant to 15 U.S.C. 78o–5(f). Reports must be received by Treasury before 5:00 p.m. Eastern Time on Monday, July 18, 2022, and must include the required positions and administrative information. Reports may be submitted using Treasury's webform (available at *https://www.treasurydirect.gov/instit/statreg/gsareg/LPR-form.htm*). Reports may also be faxed to Treasury at (202) 504–3788 if a reporting entity has difficulty using the webform.

The 1½% Treasury Note of February 2024, Series AY–2024, have a CUSIP number of 91282CEA5, a STRIPS principal component CUSIP number of 912821HK4, and a maturity date of February 29, 2024.

The public announcement, a copy of a sample Large Position Report which appears in Appendix B of the rules at 17 CFR part 420, supplementary formula guidance, and a series of training modules are available at *https://www.treasurydirect.gov/instit/statreg/gsareg/lpr-reports.htm.*

Non-media questions about Treasury's large position reporting rules and the submission of Large Position Reports should be directed to Treasury's Government Securities Regulations Staff at (202) 504–3632 or *govsecreg@fiscal.treasury.gov.*

The collection of large position information has been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB Control Number 1530–0064.

Joshua Frost,

Assistant Secretary for Financial Markets.

[FR Doc. 2022–15531 Filed 7–20–22; 8:45 am]

BILLING CODE 4810–AS–P

FEDERAL REGISTER

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Part II

Department of Transportation

Office of the Secretary

49 CFR Parts 23 and 26

Disadvantaged Business Enterprise and Airport Concession Disadvantaged Business Enterprise Program Implementation Modifications; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 23 and 26

[Docket No. DOT–OST–2022–0051]

RIN 2105–AE98

Disadvantaged Business Enterprise and Airport Concession Disadvantaged Business Enterprise Program Implementation Modifications

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT or the Department).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This rulemaking would strengthen implementation of the Department of Transportation's (Department or DOT) Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprise (ACDBE) Program regulations. The NPRM would update personal net worth and program size thresholds for inflation; modernizes rules for counting of material suppliers; incorporate procedural flexibilities enacted during the coronavirus (COVID–19) pandemic; add new program elements to foster greater usage of DBEs and ACDBEs with concurrent, proactive monitoring and oversight; update certification provisions with less prescriptive rules that give certifiers flexibility when determining eligibility; and make technical corrections that have led to substantive misinterpretations of the rules by recipients, program applicants, and participants.

DATES: Comments should be filed by September 19, 2022. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments (identified by the agency name and DOT Docket ID Number DOT–OST–2022–0051) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2022–0051 or the Regulatory Identification Number (RIN) 2105–AE98 for the rulemaking at the beginning of your comment. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Paperwork Reduction Act: Pursuant to 44 U.S.C 3506(c)(2)(B), DOT solicits comments about the accuracy of the hours and cost burden estimates. Comments should be submitted to Walter Bohorfoush, Supervisory Information Technology Specialist, Office of the Chief Information Officer, U.S. Department of Transportation, at 202–366–0560/*walter.bohorfoush@dot.gov* or Joseph Nye, Office of the Secretary Desk Officer, Office of Management and Budget, at *Joseph_B_Nye@omb.eop.gov.* The Office of Management and Budget (OMB) is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

Docket: For internet access to the docket to read background documents and comments received, go to *https://www.regulations.gov.* Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave. SE, Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.

Electronic Access and Filing: A copy of the Notice of Proposed Rulemaking, all comments, final rule and all background material may be viewed online at *https://www.regulations.gov* using the docket number listed above. A copy of this notice will be placed in the docket. Electronic retrieval help and guidelines are available on the website. An electronic copy of this document may be downloaded from the Office of the Federal Register's website at: *https://www.FederalRegister.gov* and the Government Publishing Office's website at: *https://www.GovInfo.gov.*

FOR FURTHER INFORMATION CONTACT: Questions concerning part 26 amendments should be directed to Marc D. Pentino, Associate Director, Disadvantaged Business Enterprise Programs Division, Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, at 202–366–6968/*marc.pentino@dot.gov.* Questions concerning part 23 amendments should be directed to Marcus England, Office of Civil Rights, National Airport Civil Rights Policy and Compliance (ACR–4C), Federal Aviation Administration, 600 Independence Ave. SW, Washington, DC 20591 at 202–267–0487/*marcus.england@faa.gov* or Nicholas Giles, Office of Civil Rights, National Airport Civil Rights Policy and Compliance (ACR–4C), Federal Aviation Administration, 600 Independence Ave. SW, Washington, DC 20591, at 202–267–0201/*nicholas.giles@faa.gov.*

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Introduction

Spanning nearly 40 years, the DBE and ACDBE Programs are small business initiatives intended to prevent discrimination, and remedy the effects of past discrimination, in federally assisted contracting markets. This proposed rulemaking advances the administration's goals of advancing equity and expanding opportunities in government programs. We invite comment from Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA) funding recipients and project sponsors, firms participating or seeking to participate in federally assisted contracts and/or in airport concessions, the prime contracting community at large, and the general public about our proposed changes to the DBE and ACDBE Program regulations at 49 CFR parts 26 and 23, respectively.

The Department revised the ACDBE Program regulation in 49 CFR part 23 (part 23) in 2005 to make it parallel, in many important respects, to the DBE regulation in 49 CFR part 26 (part 26). DOT later modified part 23 in June 2012, amending the small business size standards and personal net worth limit for ACDBE Program participants. In October 2014, the Department published a final rule for part 26, revising the Uniform Certification Application (UCA) and the Uniform Report of DBE Awards or Commitments and Payments (Uniform Report), and adding the Personal Net Worth (PNW) Statement. The rule also strengthened the certification-related provisions, amended provisions addressing good faith efforts, overall goal setting, transit vehicle manufacturers, and counting for trucking companies.

Since 2014, FAA, FHWA, FTA, and the Departmental Office of Civil Rights (DOCR) have held outreach and listening sessions and conducted trainings on a range of critical program topics including certification, counting, goal setting, good faith efforts, joint ventures, long-term exclusive (LTE) agreements at airports, PNW, gross receipts calculation adjustments, and participatory reporting. In Fiscal Year 2019, for example, FAA conducted six listening sessions, each focusing on issues identified within the specific subparts of part 23 with input from airport sponsors, ACDBEs, certifying agencies, consultants, and industry groups. In that same fiscal year, FHWA held stakeholder listening sessions about supply transactions and counting mechanisms for DBEs considered brokers, manufacturers, and regular dealers.

The Department also conducted internal research and analysis of issues raised by stakeholders before and during the COVID–19 pandemic, including those presented by the Transportation Research Board, the Airport Cooperative Research Program, prime contractor associations, and small businesses submitting certification appeals to DOCR. The Department found that many portions of the current rules seem outdated for today's DBE and ACDBE marketplace. They might inhibit firm growth and success, and limit recipient and sponsors' ability to effectively monitor program compliance by all participants in a pandemic and post-pandemic environment. The Department seeks to update several core

provisions of the regulation to maintain optimal program performance, improve operational cohesiveness, and provide contemporary solutions for program deficiencies.

The DBE Program was reauthorized in the Bipartisan Infrastructure Law (BIL) (enacted as the Infrastructure Investment and Jobs Act (Nov. 15, 2021) (Pub. L. 117–58)). The ACDBE Program is authorized and mandated by 49 U.S.C. 47107(e), 42 U.S.C. 2000d, 49 U.S.C. 322, and Executive Order 12138.

Part 26

Subpart A—General

1. Bipartisan Infrastructure Law (BIL) and Fixing America's Surface Transportation Act (FAST Act) (§ 26.3)

The Department is amending § 26.3 to add applicable Titles in the reference to the Department's surface authorizations, the BIL enacted on November 15, 2021, and the Fixing America's Surface Transportation Act (FAST Act), enacted on December 4, 2015.

2. Definitions (§ 26.5)

We propose minor technical and spelling corrections for the following terms: ''Alaska Native, ''Department or DOT,'' ''Indian tribe or Native American tribe,'' ''primary industry classification,'' ''recipient,'' and ''Secretary.'' We also propose expanding current definitions and adding new definitions, as described below.

Disadvantaged Business Enterprise

We would like to clarify the term ''Disadvantaged Business Enterprise'' to align it with the definition in the Department's official guidance regarding the types of firms that should apply for DBE and/or ACDBE certification.[1] The guidance provides that certification in the DBE Program be limited to business concerns engaged in transportation-related industries. We propose adding that language to the definition of Disadvantaged Business Enterprises.

Personal Net Worth

The Department seeks to modify the definition of ''personal net worth'' for simplicity and to include a reference to the applicable provision (*i.e.,* proposed § 26.68).

Principal Place of Business

We would like to clarify the definition of ''principal place of business'' to explain that it does not include construction trailers or other temporary construction sites. This clarification would mirror the Small Business Administration's (SBA) definition of ''bona fide place of business'' in 13 CFR 124.3.

Transit Vehicle

The Department recognizes that the term ''transit vehicle'' is used throughout part 26 yet is not defined; some recipients and TVMs have expressed confusion over whether ''transit vehicle'' refers to only those vehicles produced by a TVM. The Department believes that defining this term in the regulation is important because whether a vehicle qualifies as a ''transit vehicle'' under part 26 has a significant impact on a recipient's goal setting and reporting efforts. For example, pursuant to § 26.45(a)(2), ''transit vehicle purchases'' are to be excluded from a recipient's goal calculation. Some recipients have incorrectly interpreted ''transit vehicle'' to mean ''vehicles used by the recipient for transit purposes,'' and therefore have excluded from their goal vehicles such as minivans manufactured by major automakers to be used for micro-transit pilots. In practice, funds used to purchase such vehicles must be included in the recipient's goal calculations because such manufacturers do not qualify as TVMs and therefore do not have their own DBE programs. The Department proposes to alleviate this confusion by adding the following definition of ''transit vehicle'' to § 26.5: a vehicle manufactured by a TVM. Additionally, the Department proposes to make explicit that a vehicle manufactured by a non-TVM is not considered a transit vehicle for purposes of part 26, notwithstanding the vehicle's ultimate use. Thus, when a recipient procures vehicles that are not manufactured by a TVM, the FTA funds used in that procurement must be included in either the recipient's overall triennial goal or in a project goal established pursuant to § 26.45(e)(3) and must not be treated as if the funds were awarded to a TVM. Relatedly, any FTA funds used to procure vehicles that are not manufactured by a TVM must be reported in the recipient's Uniform Report pursuant to § 26.11(a).

Transit Vehicle Dealership

The Department proposes to add a definition of ''transit vehicle dealership'' to § 26.5. This change, in combination with the proposed edits to § 26.49, will clarify the Department's existing practice regarding transit vehicle dealerships. The Department proposes to define ''transit vehicle dealership'' as follows: a business that is primarily engaged in selling transit vehicles but that does not manufacture vehicles itself. This addition would facilitate more accurate tracking of FTA funds and DBE participation, thus better serving the program.

Transit Vehicle Manufacturer (TVM)

The Department first added a definition of TVM to § 26.5 on October 2, 2014 (79 FR 59592). Through experience, we have seen that the current definition creates confusion for manufacturers of both public and private mass transportation vehicles. The Department's practice is to require all manufacturers of vehicles intended for public mass transportation to become certified TVMs to bid on FTA-funded contracts for such vehicles, even if they also manufacture vehicles for both public and private transportation and industrial vehicles. However, under the current definition such a manufacturer may question whether its ''primary business purpose is to manufacture vehicles specifically built for public mass transportation,'' especially if the combined sales to private operators and from commercial vehicles exceed the sales of vehicles sold to public transit operators. The Department has found that the current definition of TVM is ambiguous and does not clearly convey which entities qualify as TVMs. Thus, we are proposing several changes to the TVM definition. We wish to remove ''specifically'' and ''public'' from the definition. This would clarify that such manufacturers are considered TVMs and are therefore subject to all applicable DBE regulation requirements.

Further, the Department has found that the TVM definition creates ambiguity as to which entities are subject to part 26 when a vehicle receives post-production alterations or is retrofitted for public transportation purposes (*e.g.,* so-called ''cutaway'' vehicles, vans customized for service to people with disabilities). In practice, the Department has noted that the current definition, which includes ''producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes,'' has caused some recipients and TVMs to mistakenly believe that any manufacturer of any motor vehicle could become a TVM based on the actions of a third-party modifier. However, as the Department stated in its response to comments on the 2014 final rule, we intended to include only those businesses that *perform* the alterations

[1] See ''USDOT Official Guidance—DBE and ACDBE Certification for Non-Transportation Industry Businesses'' at *https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/dbe-and-acdbe-certification-non-transportation.*

or retrofitting to vehicles for public transportation purposes. Accordingly, the Department proposes to address this confusion by clarifying that the businesses that perform retrofitting or post-production alterations to vehicles so that such vehicles may be used for public transportation purposes are considered TVMs.

Further, the current TVM definition states that ''businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale ''off the lot'' are not considered transit vehicle manufacturers.'' With this language, the Department intended to exclude from the TVM definition entities that mass produce vehicles that are not specifically intended to carry a large number of passengers, which generally lack significant opportunities for recipient-requested specifications at the manufacturing stage. The Department recognizes that some recipients do use such vehicles for transit purposes. For example, a transit agency may use a completely unmodified four-door sedan to provide paratransit services for riders who do not require specialized equipment. In practice, the Department has noted that it is unclear whether any vehicle manufacturer makes vehicles ''solely'' for personal use. Still, the Department intends to exclude vehicle manufacturers that are primarily engaged in selling vehicles that are ultimately designed to be used by individuals, notwithstanding their actual use. Generally, public transportation does not currently represent a major line of business for these manufacturers, and their business structures and supply chains do not create the sort of subcontracting opportunities that would allow for meaningful DBE participation. The Department would like to exclude such manufacturers and requests comments on whether such manufacturers should be treated as TVMs when they intend to bid on FTA-assisted contracts, particularly in light of new transit models and emerging vehicle technologies.

Additionally, the Department has found that the ''off the lot'' condition is unnecessary and results in further confusion. The Department initially included the ''off the lot'' language to highlight that once a vehicle reaches the lot there are no longer meaningful opportunities for DBEs to participate in the manufacturing process, therefore obviating the rationale for requiring a TVM to operate a DBE Program. However, the language has caused some eligible TVMs to question how they should treat vehicles that they manufacture and sell to recipients from their own lots. The current definition creates some confusion over whether a vehicle must be both for personal use and for sale off the lot to meet the exception, or instead only needs to meet one of those conditions.

The Department proposes to address this ambiguity by replacing ''solely'' with ''primarily,'' removing the reference to ''off the lot'' purchases and, as discussed below and in the discussion of the proposed changes to § 26.49, add a definition and specify the requirements for transit vehicle dealerships. The Department expects that these revisions would clarify to vehicle manufacturers primarily engaged in producing personal use vehicles that they are generally not subject to part 26 and would clarify to eligible TVMs that the point of sale is irrelevant if it is the TVM that bids on the contract from the recipient.

Unsworn Declaration

Parts 26 and 23 contain several sections that require applicants and DBEs to submit documentation by notarized statement, sworn affidavit or unsworn declaration. See *e.g.,* §§ 23.31(c)(2), 23.39(b), 26.61(c), 26.67(a), 26.83(c)(3), (i)(3), and (j), and 26.85(c)(4). The Department recognized (and continues to recognize) that the COVID–19 public health emergency made it difficult and unsafe to have forms notarized in person. Thus, on April 30, 2020, we issued temporary guidance to address this challenge.[2] It was extended until June 30, 2022, and permits alternative methods to meet the notary requirements in parts 26 and 23 by:

1. Allowing the use of online notary public services if the recipient's state permits notarized digital signatures validated with an electronic notary seal.

2. Allowing the use of a subscribing witness if the recipient's state permits such use permitting the document to be signed in the presence of a witness; the witness, not the signer, then appears before a notary if doing so does not compromise social distancing.

3. Allowing the filing of unsworn declarations executed under penalty of perjury rather than sworn affidavits, including affidavits of no change.

4. Allowing unsworn declarations as an interim measure and requiring the applicant or certified firm to follow up with a sworn version at a to-be determined later date.

The Department is aware that the remote online notarization process is working effectively, and states are increasingly permitting this process in furtherance of the DBE requirements. The Department understands that in response to the COVID–19 pandemic, some states accelerated the implementation of laws permitting remote notarization or temporarily waived certain provisions of law that would otherwise impede the availability of remote notarization.

Further, the Department believes the use of unsworn declarations executed under penalty of perjury rather than sworn affidavits has been viewed as a positive development. There are compelling reasons to continue allowing declarations under circumstances in the regulation where affidavits or verifications are normally required. The Department underscores that the use of declarations in lieu of sworn affidavits does not diminish the legal sanctions available. Section 26.107(e) acknowledges that the Department may refer false statement claims under 18 U.S.C. 1001 to the U.S. Department of Justice for prosecution. Additionally, misstatements in a declaration are punishable as perjury under 18 U.S.C. 1621. Moreover, 28 U.S.C. 1746 recognizes that a matter required or permitted to be supported, evidenced, or proved by the sworn affidavit, may be supported by an unsworn declaration under penalty of perjury, with like force and effect.

The use of online notarization services and the use of declarations in lieu of sworn affidavits has reduced burdens for small businesses that do not have direct or immediate access to a notary public. The Department, however, believes more benefits with even less burden can be achieved by relying on declarations rather than sworn affidavits; these benefits include convenience, time, and cost savings. Based on the success of the temporary practices and the benefits to small businesses, the Department is proposing to eliminate the requirement for sworn affidavits and notarization and instead require the use of unsworn declarations under penalty of perjury.

3. Reporting Requirements (§ 26.11 and Appendix B)

The Department proposes three changes to reporting requirements: (1) revise the Uniform Report to include additional data fields, (2) direct recipients to obtain a standardized set of bidders list data and enter it into a centralized database specified by DOT, and (3) expand data collection requirements for Moving Ahead for

[2] See ''COVID–19 Public Health Emergency: Update and Supplemental Guidance'' at *https://www.transportation.gov/sites/dot.gov/files/2020-05/DOCR%20Guidance%20April%2030%2C%202020_0.pdf.*

Progress in the 21st Century (MAP–21) data reports.

The proposed revisions to reporting requirements are critical to DOT's efforts to improve data-driven program evaluation and DBE Program decision making going forward. The Department believes the proposed revisions would remedy current reporting deficiencies. They would also be a meaningful step toward a more data-driven and uniform approach to making future program improvements. An expanded data collection would allow DOT to look at data across several years to get a thorough assessment of the impact of the DBE Program.

Uniform Report

The Department collects much of its DBE utilization data from the Uniform Report. Recipients annually submit it to the OA(s) that provide funding to them. We propose to revise the Uniform Report to include additional data that would assist the OAs and the Department with evaluating whether the DBE Program is making progress toward meeting its stated objectives in § 26.1. The Department proposes to revise the Uniform Report to include the following new data fields:

- Names of the DBEs with contracts that are included in the Uniform Report.
- Zip code of the firm's principal place of business.
- Owner(s)' contact information.
- Work category/trade firm performed in that contract.
- North American Industry Classification System (NAICS) code associated with the type of work performed.
- Dollar value of the contract.
- Federally assisted contract number.
- Ethnic group membership.
- DBEs decertified during the reporting period for excess gross receipts beyond the relevant size standard or because the disadvantaged owner exceeded the personal net worth cap.
- Number of DBEs listed at time of commitment that were replaced during the life of the contract.

The Department believes that access to this data would help inform the Department about areas that may need to be addressed through future policy decisions and regulation revisions. For example, the names of DBEs and NAICS codes would allow the Department to identify the firms working on federally assisted contracts to determine whether the DBE Program is benefiting a large subsection of all DBEs and not only a select few.

Information on firms that have ''outgrown'' the DBE Program by exceeding the business size or PNW limits, would allow the Department to determine whether firms later reenter the program. This data would help the Department to evaluate progress towards the DBE Program objective: ''[t]o assist the development of firms that can compete successfully in the marketplace outside the DBE Program.'' § 26.1(g).

The proposed data collection would make it possible for the Department to compare information from 3 datasets: the new MAP–21 report (*e.g.,* the total number of DBEs, delineated by NAICS code and prequalification), bidders list (*i.e.,* those DBEs that are actively bidding on federally assisted contracts), and Uniform Report (*i.e.,* those DBEs that are awarded contracts and subcontracts). The new information would improve the Department's ability to evaluate program trends and would help establish a national baseline for the status of the DBE Program.

The Department also proposes to revise the method that recipients use to submit the Uniform Report. Section 26.11(a) instructs recipients to transmit the Uniform Report form in appendix B for review by the applicable OA. Recipients currently submit the information electronically and no longer submit printed spreadsheets. For this reason, the Department proposes to amend the rule, instructing recipients to submit this information in a form acceptable to the concerned OA. We also propose to remove the Uniform Report form from appendix B. Official forms are not required to be reproduced in the Code of Federal Regulations (CFR), and the Uniform Report is readily available on the DOT website.[3] Removing this form from the CFR is an administrative action and would not impact the ability of the public to comment on any amendments to the information collections contained in these forms.

The proposal would make a minor change to instruction 5, which specifies the reporting period for FHWA and FTA recipients. The change would clarify that FTA recipients that do not meet the new $670,000 threshold in § 26.21, are required to report data to the OA that covers the entire year.

The proposal would also make a technical correction to line 18 of the report to conform the form text with the Department's official guidance on reporting payments on ongoing contracts and add an example to explain the number of contracts reported in item 18(C) may differ from the number reported in item 18(A).[4]

Finally, the Department does not currently collect data on the number of DBEs committed in response to a contract goal (prior to contract award) that were terminated during the life of the contract by the prime contractor. Nor do we collect information on the reasons for those terminations. This data would assist the Department with identifying any trends in the number of terminations and the most common reasons for terminations. For example, many terminations may occur in certain parts of the country, or many terminations may occur due to overcommitments by DBEs. With this data available, the Department can provide focused technical assistance and training to reduce the number of DBEs terminated and provide supportive services to DBEs to assist in appropriate bidding practices. The Department seeks comment about how frequent and detailed the collection should be as well as what would be the best and most efficient method to capture data on terminations of committed DBEs.

Bidders Lists

Section 26.11(c) instructs recipients to create and maintain a bidders list with certain information about DBE and non-DBE contractors and subcontractors who seek work on federally assisted contracts. Section 26.11(c)(1) states that the purpose of the list is related to determining availability for use in goal-setting. In the 1999 final rule, the Department noted ''bidders lists appear to be a promising method for accurately determining the availability of DBE and non-DBE firms'' and that ''creating and maintaining a bidders list would give recipients another valuable way to measure the relative availability of ready, willing and able DBEs when setting their overall goals.'' (64 FR 5096, 5104 (Feb. 2, 1999)) The Department also noted in the 1999 final rule that flexibility was important because of potential burdens related to collecting data about ''subcontractors that were unsuccessful in their attempts to obtain contracts.'' Id. At the time, the Department did not seek to impose procedural requirements for collecting the data, in the interest of reducing burdens. The Department suggested several possible collection methods, including disseminating surveys and aggregating data from multiple sources.

[3] See ''New DBE Uniform Report'' at *https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/new-dbe-uniform-report.*

[4] See ''Guidance on Completing Ongoing Payments'' at *https://www.transportation.gov/sites/dot.gov/files/2020-01/docr-20180425-001part26qa.pdf.*

These suggestions were incorporated into § 26.11(c)(3). It is not currently known how many recipients engaged or continue to engage in surveys and questionnaires to obtain bidders list information or how many are using this information to set overall goals. In practice, when setting overall goals many—if not most—recipients use DBE directories and U.S. Census Bureau data, a method described in § 26.45(c)(1) or use data from a disparity study as described in § 26.45(c)(3).

Many recipients of DBE Programs specify that bidders list information is collected from all bidders at the time of bid submission, and many recipients rely on electronic systems for capturing and storing this information. Currently, all bidders list information is obtained and maintained locally by each recipient and is not reported to the Department or the concerned OA. As a result, this data is disaggregated among thousands of recipients in a wide variety of formats and may contain a variety of different data points. In a standardized and centralized format, this data could be of great value to the Department in evaluating the extent to which the program is achieving the objectives of § 26.1(b) and (g). A centralized database, searchable by recipients, could also improve the viability of the bidders list method described in § 26.45(c)(2) as a means for recipients to identify DBE availability at Step 1 of the overall goal setting process.

The Department therefore proposes revising § 26.11(c) to require recipients to obtain and enter bidders list data into a centralized database the Department would specify. The purpose of this proposed change is twofold: first, the revision would build a data source that would allow more accurate and more granular analysis of firms actively seeking to participate in DOT-funded contracts in relation to the DBE Program objectives of § 26.1; secondly, a searchable, centralized database with bidders list information that includes an expanded dataset would aid recipients in evaluating DBE availability for goal setting purposes. We invite comment on estimated costs for developing and maintaining such a database (this is not a request for proposals or offers, and the Department is not seeking or accepting unsolicited proposals).

The Department also proposes to amend § 26.11(c)(2) to require recipients to obtain and report the following additional data sets: race and gender information for the firm's majority owner; and NAICS code applicable to each scope of work the firm sought to perform in its bid. This proposed revision would help ensure that the bidders list information to be collected includes at least the same elements as those being required in the proposed change to the Uniform Report. In conjunction with the proposed changes to the MAP–21 Report in § 26.11(e) and the Uniform Report, the proposed bidders list reporting requirement would provide the Department with data showing how many and what types of DBE firms are certified, how many DBEs are actively bidding as prime or subcontractors, and which of them are actually awarded contracts or subcontracts.

To ensure uniformity of data collection for proper analysis, the Department proposes a change to § 26.11(c)(3) regarding the collection of bidders list information to require a standard practice of requesting the information with bids or initial proposals.

The Department anticipates minimal impact to stakeholders from these changes as recipients already collect most (if not all) of this information when conducting good faith efforts to obtain DBE participation on contracts with DBE goals. Additionally, contrary to the situation in 1999, current internet and data capture technology makes sending out surveys and questionnaires and aggregating that data less burdensome.

MAP–21 Data Reports

In 2014, the Department implemented a longstanding provision in the Department's surface transportation program authorizations, adding a new reporting requirement which we called the MAP–21 data report. Under § 26.11(e), state departments of transportation, on behalf of their UCP members, submit UCP directory information yearly to the Departmental Office of Civil Rights reporting the percentage and location in the state of DBEs controlled by women; socially and economically disadvantaged individuals (other than women); and individuals who are women and are otherwise socially and economically disadvantaged individuals. The Department usually sends a request for this information each Fall with a January due date and we have interpreted the ''location in the state'' to mean certified in a recipient's home state or certified out-of-state.

The MAP–21 report information is distinct from what is included in the Uniform Report that recipients and sponsors annually submit to the relevant OAs. It provides a yearly snapshot of the number and percentage of DBEs in that state. However, the MAP–21 report is limited in scope and utility largely because the Department is unable to break out the number of firms certified, denied, or decertified by ethnicity. This limitation prevents any comparison to section C of the Uniform Report that could show volume of participation in relation to firm ownership data contained in state directories.

We are mindful that similar concerns were raised in a 2001 Government Accountability Office (GAO) report (''Disadvantaged Business Enterprise: Critical Information is Needed to Understand Program Impact,'' GAO–01–586, pp. 18–19 (Jun. 1, 2001)), which criticized elements of the Department's data collection as not truly reflective of the environment that exists for the small business community of DBEs and DBE applicants. The GAO observed, for example, that a lack of key information prevents anyone from gaining a clear understanding of the firms that participate in the DBE Program and how these firms compare with the rest of the transportation contracting community.

In response to the GAO report and subsequent observations, the Department instituted many changes to the Uniform Report, mandated improvements to state directories, and instituted the current MAP–21 collection. The existing MAP–21 data collected shows the number of DBE certifications steadily increasing (approximately 3.5 percent each year). More can be done now, however, to inform our understanding of the DBE Program's impact and depth of coverage.

The Department believes the proposed revision remedies the current report deficiencies and is a meaningful first step toward a data-driven and uniform approach to future program improvements and coordination among program actors. The proposed revision does not replace existing data collection requirements under the BIL but expands the collection of data to cover the number of firms denied certification, summarily suspended, or decertified by ethnicity and gender. This expanded data collection would allow the Department to look at data across several years to develop a thorough assessment of the impact of the DBE certification process.

We invite comment on expanding this collection to cover: (1) the number and percentage of in-state and out-of-state DBE certifications for socially and economically disadvantaged owners by gender and ethnicity (Black American, Asian-Pacific American, Native American, Hispanic American, Subcontinent-Asian American, and non-minority); (2) the number of DBE

certification applications received from in-state and out-of-state firms and the number found eligible and ineligible; (3) the number of in-state and out-of-state firms decertified and summarily suspended; (4) the number of in-state and out-of-state applications received for an individualized determination of social and economic disadvantage status; (5) the number of in-state and out-of-state firms certified whose owner(s) made an individualized showing of social and economic disadvantaged status; and (6) the number of DBEs pre-qualified in their work type by the recipient.

The Department proposes to create a similar data reporting requirement for the ACDBE Program (excluding prequalification data). The proposed rule would add a new paragraph to § 23.27 that would require state departments of transportation, on behalf of their UCP members, to include ACDBE data in the yearly report to DOCR. This data collection would provide the Department a yearly snapshot of the number and percentage of ACDBEs. The Department anticipates that expanding the collection to include information on ACDBEs would pose minimal burden on recipients because UCPs are already required to report this data for DBEs. It is highly useful in our view for data on ACDBEs to be reported in order for the Department to gain a deeper understanding of the firms that participate in that program and how these firms compare with the rest of the airport concession community. It is important for the Department to be able to do this in order to enhance the Department's ability to conduct more detailed trend analyses of changes in ACDBE participation levels and assess the program's overall success.

Subpart B—Administrative Requirements for DBE Programs for Federally Assisted Contracting

4. Threshold Program Requirement for FTA Recipients (§ 26.21)

Currently, the rule requires only those FAA and FTA recipients that will award prime contracts with cumulative total value exceeding $250,000 in a fiscal year to have a DBE Program. The $250,000 value for the threshold was first introduced in a 1983 final rule, but it originally meant that FTA and FAA recipients who *received* over $250,000 in a fiscal year were required to have a DBE Program—in 2000, the $250,000 threshold was updated to apply to contract awards.

There is little documentation as to the rationale for the threshold when it was originally introduced. However, program experience shows that recipients with lower dollar amounts of total prime contract awards have low levels of DBE participation. Those lower contract amounts necessarily imply low amounts of DBE participation simply because the pool of available contract awards is small. In addition, small prime contract awards have fewer opportunities for unbundling to allow for subcontracting opportunities. It is only with subcontracting opportunities that race-conscious awards can be used. Further, subcontracts of small prime contracts are of low total value and may not attract much interest from DBEs.

The proposed rule makes one adjustment to the rule based on observed changes in the consumer price index (CPI) from 1983 to 2020. The change sets a new threshold level for FTA recipients that would trigger full adherence to those rule requirements FTA deems essential for all recipients. This change amends the rule so that FTA recipients receiving planning, capital and/or operating assistance less than $670,000 must maintain a program locally that includes the requirements of § 26.11, reporting and record keeping; § 26.13, contract assurances; § 26.23, a policy statement; § 26.39, fostering small business participation; and § 26.49, concerning transit vehicle manufacturers. FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds $670,000 in FTA funds in a Federal fiscal year must have a DBE Program meeting all the requirements of the rule. The Department will adjust the threshold for inflation in its discretion as the need arises.

The Department conducted an economic analysis of this change, identifying how many FTA recipients would no longer need a full program (approximately 80), and the cost savings to those recipients and the Department. FTA also conducted a public outreach session on October 14, 2021 and received general comments on changes to the DBE Program, including increasing the threshold and amending the reporting requirements for recipients of that OA. The Department found that raising the threshold is expected to provide administrative cost savings to FTA recipients with reduced reporting requirements and only minor levels of reductions in total program-level DBE participation. The FTA Office of Civil Rights will also experience reduced workload related to monitoring, oversight, and training of these smaller recipients. Further, the FTA Office of Civil Rights staff will be able to direct their resources to recipients in other areas of need. That redeployment of FTA staff resources may produce more DBE participation from other recipients that may offset any losses in DBE participation from recipients who are below the revised threshold.

We anticipate that recipients would experience cost savings resulting from lower administrative burdens if the threshold were raised. The exact impacts of this change would vary from year to year, given that recipients have varying amounts of Federal contract dollars every year, but an average impact can be estimated. The categories of cost savings included in the analysis are:

- *Program development and goal setting:* These are the administrative costs associated with the development of a recipient's DBE Program and establishing the DBE Program goals every three years. This work involves some amount of effort by recipients. In some cases, recipients may contract this work out to a consultant.
- *Monitoring, reporting, and outreach:* These are the administrative costs incurred by the recipient related to administering their DBE Program every year. The recipient must monitor their contracts to ensure the work committed to DBEs is actually performed by DBEs, and verify payments made to DBEs. The recipient performs this work by conducting contract reviews and work site visits. Entities must report on their DBE participation twice a year to FTA. They must also conduct regular outreach to DBEs in their community.
- *Conferences and trainings:* Recipients may send their employees to conferences or trainings related to the DBE Program. The cost to the recipient is incurred through travel expenses and the opportunity cost of the employee's time. Some trainings provided by private companies and organizations include registration fees, but DOT offers training free of charge. This analysis assumes no registration fees for the conferences and trainings.
- *DOT technical assistance:* FTA provides technical assistance to transit agencies for their DBE Programs. This cost is measured by the typical number of hours spent by FTA staff providing such assistance per recipient.

The Department conducted a Regulatory Impact Analysis (RIA) (available in the docket) of this proposal in connection with this rulemaking; and believes that the revisions proposed reduces the administrative burden of the DBE Program on recipients receiving less funding and would have a minimal impact on race-neutral awards. We are proposing to retain annual reporting

requirements, nondiscrimination contract assurances, strategies for expanding contracts with small businesses, and transit vehicle manufacturing requirements.

5. Unified Certification Program (UCP) DBE/ACDBE Directories (§§ 26.31 and 26.81(g))

Under the current DBE and ACDBE rules, each UCP must maintain a directory of all DBE and ACDBE firms, in the state in which the UCP is located. The directories must include each firm's address, phone number, and types of work the firm has been certified to perform.[5] The directories must be publicly available both electronically and in print. UCPs are to make additions, deletions, and other changes as soon as they learn of them.

The Department enacted this requirement in 1999, noting in its final rule that commenters discussed whether the directories should include information concerning the qualifications of the firm to do various sorts of work. For example, has the firm been pre-qualified by the recipient or another state agency? Can it do creditable work? What kinds of work does the firm prefer to do? Some commenters also requested that the directory should list the geographical areas in which the firm is willing to work.

The primary purpose of the directories is to show the results of the certification process, with sufficient identifying information for prime contractors to contact the DBEs or ACDBEs for those areas of work or supply they could perform or provide on a potential project or concession opportunity. Information about firms' qualifications, geographical preferences for work, performance track record, capital, etc., were not required to be part of the directories because, as stated in the 1999 preamble, this would ''clutter up the directory and dilute its focus on certification.'' The Department expected that a prime contractor or prime concessionaire would contact a DBE or ACDBE to discuss its qualifications before hiring it to perform work as a subcontractor, sub-concessionaire, or supplier on a federally assisted contract or concession opportunity. While the Department continues to believe that the directories serve this purpose, the current regulation was written before the widespread adoption of the internet and the availability of online resources.

The proposed rule would direct UCPs to expand their directories of DBE and ACDBE firms, allowing them to display other essential information about DBEs and ACDBEs that attests to the firms' ability, availability, and capacity to perform work. While the UCP would in no way be required to vouch for the quality of the DBE or ACDBE's work, it could expand information regarding a DBE or ACDBE beyond merely its contact information and NAICS code(s). Under the proposal, all UCPs would amend their directories so that firms would have a standard set of options for information they can choose to make public, such as a capability statement, state licenses held, pre-qualifications, personnel and firm qualifications, bonding coverage, recently completed project(s), equipment capability, and a link to the firm's website. Under the proposed rule, UCPs would be required to incorporate these information fields as additional criteria by which the public can search and filter the UCP directory. We invite comments about the specific categories of information that prime contractors or prime concessionaires and DBEs or ACDBEs would find useful to have publicly available. We anticipate that most DBEs and ACDBEs will avail themselves of this opportunity, recognizing this is a cost-effective and timesaving alternative to market their qualifications while providing a one-stop baseline tool for prime contractors and prime concessionaires as they seek out potential subcontractors and sub-concessionaires. Further, the Department also proposes eliminating the paper requirement for the directory in § 26.81; we see no continued utility for this requirement as all directories are available online.

We invite comments on whether prime contractors and prime concessionaires will see time-and-resource savings with such a change to the directory. There is a clear benefit to prime contractors and prime concessionaires that seek out information regarding a firm's capabilities, experience, and past performance. Given the growing size of DBE/ACDBE directories each year, this may expedite contractor or concessionaire selection and overall bid or solicitation response times. Additional time savings would be realized in ''contract or concession specific goal'' situations, wherein an award to a prime contractor or prime concessionaire cannot be made unless that prime contractor or prime concessionaire commits to contracting to a sufficient number of DBEs or ACDBEs to meet a contract or concession specific goal or demonstrates good faith efforts if it falls short of the goal through contracting commitments. Also, when a prime contractor complies with the regulatory requirements to terminate and replace a DBE or ACDBE to which it committed at the time of award, it is typically required to make good faith efforts to replace that DBE or ACDBE. A more informative directory could assist prime contractors or prime concessionaires with the replacement process as well and could be used as one element in the good faith efforts analysis, a point referenced by prime contracting organizations in response to the Department's October 2017 request for public input on existing regulatory and agency actions. (82 FR 45750 (Oct. 2, 2017))

We are aware that some UCPs have already expanded the search capabilities of their current directories of DBE and ACDBE firms. We anticipate UCPs being able to implement the requirement by January 1, 2024, or within 180 days of the final rule, but we invite comment on how long UCPs expect the proposed enhancements may take, if enhancements are feasible given existing resources, and whether the benefits we describe above outweigh any upfront costs. We invite comment on whether the directory enhancements should consist of drop-down menus that draw from available data sources, open-ended fields with a word limitation (*e.g.,* 250 words more or less), or some combination thereof. We invite comment on which of these approaches would be most conducive to useful search functionality, feasibility, and resource efficiency. If the proposed change takes effect, the Department anticipates having a phase-in period for the additional requirements described and will not make compliance mandatory until the certification members of UCPs can build the enhancements and make them operational.

6. Monitoring Requirements (§ 26.37)

Since 1999, § 26.37 has set forth a recipient's responsibility for monitoring the performance of other program participants. This regulation in Subpart B, however, focuses on a recipient's responsibility to include in its DBE Program a monitoring and enforcement mechanism to verify that work committed to a DBE at contract award is actually performed by that DBE. In addition, the recipient must keep a running tally of actual DBE payments to ensure that DBE participation is credited toward overall and contract

[5] The UCP directory provisions in §§ 26.31 and 26.81(g) are applicable to the ACDBE program per § 23.23(a).

goals only when payments are actually made to DBEs.

The Department has learned that certain language in § 26.55(h) has caused confusion among recipients. The heading of this section is misleading; it suggests that the section is limited to monitoring the performance of other program participants, when it also sets forth significant oversight requirements for recipients, including the requirement to keep a ''running tally'' of payments toward the achievement of the recipient's overall goal as well as each contract with a DBE goal. Recipients also questioned how the requirement to certify in writing each DBE was actually performing the work for which it was committed intersected with § 26.55, which requires recipients to count DBE participation toward its annual goal and a contract goal only if the DBE is performing a commercially useful function (CUF).

The Department also learned that the requirement for the recipient to keep a ''running tally'' was often overlooked or misconstrued. Finally, the Department learned that many recipients were confused by use of the word ''certification,'' used in this section as it pertains to the requirement that there must be written, signed confirmation that each DBE was monitored. The word ''certification'' in the DBE Program more often than not refers to the application process a firm undertakes to achieve DBE status or ''certification.''

We seek to clarify § 26.37 by changing the title from ''What are a recipient's responsibilities for monitoring the performance of other program participants?'' to ''What are a recipient's responsibilities for monitoring?'' We believe that this would better describe the substantive content of the regulatory requirements.

The Department also wants to make clear that even DBEs used race-neutrally must be monitored to count toward a recipient's overall goal. We have learned that some recipients do not monitor DBE participation unless there is a race-conscious contract goal.

We also seek to combine the requirements under this section with the commercially useful function (CUF) requirements in § 26.55. In order for a recipient to verify that a DBE is performing the work it was committed to perform, the recipient would be required to also verify that the DBE is performing in the manner in which it can be counted toward the recipient's overall goal and a contract goal. This would clarify that while a CUF review can be an additional step in monitoring, a CUF review is necessary for every DBE that performs for credit toward a recipient's overall goal and a contract goal. A CUF review could be combined with the § 26.37 requirement for the written verification or performed in a subsequent monitoring. Our official guidance on this section also makes this clear.[6]

The Department seeks to emphasize the importance of the ''running tally'' requirement. Since 1999, the Department has made it clear that a running tally applies to a recipient's overall goal and contract goals. Therefore, we want to underscore in this revision that each recipient would be required to keep a running tally, or ongoing accounting, of its attainment of its overall DBE goal (including race-neutral DBE participation) and make adjustments, if necessary, as set forth in § 26.51(d).

The running tally requirement would also require recipients to keep an accounting of each contractor's progress in attaining a contract goal through progressive payments to the committed DBE. This would be necessary to allow recipients to intervene in real time when and/or if they observe a prime contractor fall short of its contract goal. Keeping an accounting of a prime contractor's progress toward meeting a contract goal would allow recipients to observe when a prime contractor is not on target toward achieving the goal. This information would allow the recipient to question whether there has been unreported termination of a DBE pursuant to a change order or otherwise; or whether the DBE has withdrawn, and whether the contractor should be using good faith efforts to find additional DBE credit, etc. If a recipient were to wait until the end of the contract to match commitments to actual payments, it would be too late to rectify any shortfalls during contract performance. This is also why the Department is also removing the sentence that indicates the monitoring requirement in this section could be performed during contract close-out reviews. The elimination of this sentence also conforms to the Department's official guidance on this issue.[7]

The Department proposes replacing the word ''certification'' with ''verification'' to avoid confusion with other parts of the regulation. We also recommend eliminating the last sentence in this section regarding DBE reports because it is misplaced.

Subpart C—Goals, Good Faith Efforts, and Counting

7. Prompt Payment and Retainage (§ 26.29)

In the 1999 preamble to the final rule, we stated that prompt payment mechanisms are an important race-neutral mechanism that can benefit DBEs and other small businesses. Without the protections embedded in the rule, we remain concerned that DBE subcontractors can be significantly—and, to the extent that they tend to be smaller than non-DBEs, disproportionately—affected by late payments from prime contractors. As we said in 1999, lack of prompt payment constitutes a very real barrier to the ability of DBEs to compete in the marketplace; since that time, the Department has required recipients to take reasonable steps to address this barrier.

In the 2021 BIL (section 1101(e)(8)) Congress repeated mandates it made in prior surface authorizations that the Department should take additional steps to ensure that recipients comply with § 26.29. Similarly, the Department's Office of Inspector General recommended the Department improve oversight of this issue.[8]

In response, the OAs recommended that guidance on this section was necessary to underscore the Department's intent. Thus, on April 15, 2016, we published official guidance [9] consisting of 12 questions and answers regarding § 26.29. With respect to prompt payment and return of retainage monitoring, the Department specified the need for recipients to create a mechanism to affirmatively monitor a contractor's compliance with subcontractor prompt payment and return of retainage requirements, and that a recipient's reliance on complaints or notifications from subcontractors is

[6] See ''Official Questions and Answers (Q&A's) Disadvantaged Business Enterprise Program Regulation (49 CFR 26)—Commercially Useful Function'' at *https://www.transportation.gov/sites/dot.gov/files/2020-01/docr-20180425-001part26qa.pdf.*

[7] See ''Recipient Responsibilities for Oversight and Monitoring of DBE Participation'' at *https://www.transportation.gov/sites/dot.gov/files/docs/mission/civil-rights/disadvantaged-business-enterprise/318146/oversight-and-monitoring-dbe-participation.pdf.*

[8] See ''New Disadvantaged Business Enterprise Firms Face Additional Barriers to Obtaining Work at the Nation's Largest Airports,'' USDOT Office of Inspector General, Report ZA–2016–002 (Nov. 3, 2015) at *https://www.oig.dot.gov/sites/default/files/New%20DBE%20Participation%20Is%20Decreasing%20at%20the%20Nation%E2%80%99%20Largest%20Ariports%2C%20and%20Certification%20Barriers%20Exist.pdf.*

[9] See ''USDOT Official Questions and Answers (Q&A's) Disadvantaged Business Enterprise Program Regulation (49 CFR 26)'' at *https://www.transportation.gov/sites/dot.gov/files/docs/Official%20Questions%20and%20Answers%204-15-16.pdf.*

insufficient. The guidance provides, in relevant part, as follows:

> Relying only on complaints or notifications from subcontractors about a contractor's failure to comply with prompt payment and retainage requirements is not a sufficient mechanism to enforce the requirements of section 26.29 . . .
>
> While this section does not mandate that a recipient employ a specific type of mechanism for monitoring prompt payment, recipients are expected to take affirmative steps to monitor and enforce prompt payment and retainage requirements.

The guidance continues, providing examples of affirmative monitoring methods.

In 2020, FHWA performed a national review on recipient compliance with prompt payment and return of retainage compliance. Among other things, the review found most recipients are not affirmatively monitoring subcontractor payments on FHWA-assisted projects. Many recipients wait for subcontractor payment complaints or other notification of non-payment before taking any action.

The Department believes including in this regulatory section a specific reference to the need for affirmative monitoring of subcontractor prompt payment and return of retainage by the recipient will reinforce the Department's position on this matter. This revision also makes clear that the requirements within this rule are intended to flow down to all lower tier subcontractors through an addition of a paragraph (f) to § 26.29.

8. Transit Vehicle Manufacturers (TVMs) (§ 26.49)

Section Heading

The current heading of § 26.49 is ''How are overall goals established for transit vehicle manufacturers?'' The heading of § 26.49 has remained constant since its introduction in 1999, but it no longer accurately describes the section's contents. The Department proposes to revise the heading to ''What are the requirements for TVMs and for awarding DOT-assisted contracts to TVMs?'' This heading would describe the contents of the section more accurately, which includes requirements for TVMs that go beyond goal setting and pre- and post-award requirements for recipients.

Terminology and Abbreviations

Section 26.49 in the current rule uses language and terms inconsistently and does not match the language and terms used by the Department in related documents and used by the industry.

The Department proposes to abbreviate ''transit vehicle manufacturer'' to ''TVM'' throughout § 26.49 so that the term's usage is uniform throughout part 26. The Department proposes to revise § 26.49(b) to use ''you'' and its forms consistently when referring to a party subject to this regulatory provision.

The Department also proposes to change references to ''certified'' TVMs to ''eligible'' TVMs in § 26.49(a)(1) and (2) to reduce any confusion as to whether a TVM must first receive a certification from FTA prior to becoming eligible to bid on FTA-assisted transit vehicle procurements. While FTA does evaluate whether a vehicle manufacturer meets the qualifications for a TVM and whether it is eligible to bid, such entities do not receive any sort of formal certification, and their eligibility is always conditioned on whether they are maintaining a DBE Program in compliance with part 26 and in good faith. We expect that this change will reduce the likelihood of a recipient mistakenly determining that a TVM is ineligible to bid because the TVM is unable to produce a certification from FTA.

Post-Award Reporting Requirements

Section 26.49(a) details the pre- and post-award requirements for FTA recipients engaged in procuring transit vehicles with FTA assistance.

Section 26.49(a)(4) requires FTA recipients ''to submit within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement.'' Since 2016, the Department has maintained an internet-based reporting form for recipients to fulfill this requirement. The Department has found that as currently written, § 26.49(a)(4) results in inconsistent and inaccurate reporting. These issues are especially prevalent when recipients report contracts with options or schedules.

Recipients occasionally do not know which events trigger the 30-day requirement and from which day they must begin counting. Some of the confusion comes from the use of the word ''award.'' Generally, FTA defines ''award'' as the Federal assistance FTA has provided to the recipient to carry out the scope of work that FTA has approved. However, § 26.49(a)(4) uses ''award'' to refer to the procurement mechanism used by a recipient to procure a transit vehicle from a TVM. Additionally, some recipients are unsure when to report when they exercise an option or receive a delivery from a schedule. One of the most common errors the Department observes related to this requirement is a recipient reporting the date the initial procurement occurred instead of the date the option was exercised. To alleviate this confusion, the Department proposes to replace ''making an award'' with ''becoming contractually required to procure a transit vehicle'' in § 26.49(a)(4), and to revise that paragraph for clarity. This clarifies that a recipient needs to reference its contract with the TVM to determine the trigger for the reporting requirements.

Recipients have also expressed confusion about which information is required to be reported. Recipients sometimes do not know what to include and exclude from the report. Section 26.49(a)(4) states that recipients must report the ''total dollar value of the contract in the manner prescribed in the grant agreement.'' Since the Uniform Report specifies that recipients are only to report the Federal share, some recipients misinterpret the language in § 26.49(a)(4) to mean both the Federal and non-Federal share.

Additionally, when reporting exercised options or scheduled deliveries, some recipients report the value of the entire contract. In practice, they must only report the value of the vehicles received from the option or schedule. For example, if a recipient contracts with a TVM to purchase 10 buses at a cost of $100,000 per bus, with the option to purchase up to 10 additional buses at the same price per bus over the next two years, and the Federal share is 50 percent; the recipient is to report only $500,000 for the initial contract, and only $50,000 per bus if and only if the recipient exercises the option to procure additional buses.

To alleviate this misunderstanding, the Department proposes to specify in § 26.49(a)(4) that the recipient is to report ''the Federal share of the contractual commitment at that time.'' This clarifies that only the Federal share is to be reported and only the funds actually required to be paid at that time.

These proposals, if adopted, would result in the Department collecting the information most useful to it, including in situations in which recipients use options and schedules. The Department clarifies that when a recipient uses a schedule in a contract and becomes contractually obligated to pay for the vehicles that will be delivered in the future as of the initial contract signing, the recipient must report once and only once. This is because the entirety of the funds will be expended by the recipient and received by the TVM in a single reporting period.

Awards to Transit Vehicle Dealerships

As currently written, part 26 does not specifically address situations in which an FTA recipient procures transit vehicles through a dealership. Reports received by FTA show that the transit vehicle market includes both direct-from-manufacturer procurements and procurements from dealerships. Previously, the rationale for requiring TVMs to maintain a DBE Program was that TVMs control their subcontracting opportunities and thus are better positioned than recipients to promote a level playing field for DBEs in the transit vehicle manufacturing market. Transit vehicle dealerships, however, are not required to maintain a DBE Program. Consequently, a transit vehicle dealership is generally not eligible to bid on FTA-assisted transit vehicle contracts. Recipients may procure vehicles from these entities but must treat such procurements as any other procurement when calculating their DBE goal. Thus, recipients may only procure transit vehicles from transit vehicle dealerships by establishing project-specific goals pursuant to § 26.49(f) and must report using the Uniform Report for that project. Further, many FTA recipients currently incorrectly report contracts with dealerships as if they were contracts with TVMs, complicating FTA's oversight efforts and resulting in inaccurate data.

The Department proposes adding new paragraph (a)(5) to § 26.49 to expressly state that a contract with a transit vehicle dealership does not qualify as a contract with a TVM, even if a TVM manufactured the vehicles procured by the recipient from the dealership. Further, as described in the discussion of § 26.5, the Department proposes defining ''transit vehicle dealership'' and ''transit vehicle'' to clarify which procurements qualify as transit vehicle procurements. The Department expects that clarifying this aspect of the DBE Program will result in more accurate DBE goals, more accurate reporting, and generally greater compliance.

TVM Goal Setting, Submission, and Review

As currently written, § 26.49(b) states that development, submission, and approval of goals is generally the same for TVMs as it is for recipients. Recipients and TVMs have expressed confusion regarding how frequently TVMs must submit their goal, what period their goal should cover, and whether FTA approval is required prior to the TVM becoming eligible to bid. The Department proposes adding language to expressly state that TVMs' goals are set and submitted annually. Further, the Department proposes eliminating the language related to FTA's approval to harmonize the requirements for TVMs with the requirements for recipients.

The proposed removal of the ''approval'' language is not intended to have any substantive effect on the conditions necessary for a TVM to be eligible to bid on FTA-assisted transit vehicle procurements, nor any effect on the process by which FTA reviews a TVM's goal and goal methodology. Even though § 26.49(a)(1) expressly states that TVMs that have submitted goals that have yet to be approved are eligible to bid, recipients and TVMs often express confusion over whether prior approval is required. Further, § 26.45(f)(4), part of the section TVMs are to reference when setting their goals, expressly states that recipients ''are not required to obtain prior Operating Administration concurrence with [their] overall goal[s].'' Additionally, § 26.49(b)(2) expressly states that the requirements for goal approval apply to TVMs in the same manner that they apply to recipients. Thus, by removing ''approval'' from § 26.49(b), the Department expects that recipients and TVMs will better understand that FTA need not approve a TVM's goal prior to the TVM becoming eligible to bid without affecting the eligibility processes and conditions.

TVM Uniform Report

As currently written, § 26.49(c) requires ''transit vehicle manufacturers awarded'' to submit the Uniform Report in the same manner as recipients to remain eligible to bid on FTA-assisted transit vehicle procurements. Some TVMs have expressed confusion over the word ''awarded'' and that confusion has resulted in eligible TVMs failing to report properly. These TVMs misinterpret the current text to mean that only TVMs that have actually been awarded contracts by FTA need to submit the Uniform Report. However, TVMs that are eligible to bid on FTA-assisted transit vehicle procurements in a given fiscal year must submit the Uniform Reports for that fiscal year, even if they were not awarded any contracts with FTA assistance. Reporting zero contracts is important for the Department's oversight efforts because it allows the Department to cross-reference the data provided by TVMs with data provided by recipients.

The Department proposes eliminating the word ''awarded'' to clarify that an eligible TVM must fulfill the relevant reporting requirements for the years in which it is eligible. This revision should not be construed to mean that an entity that otherwise qualifies as a TVM is required to submit any reports to FTA or the Department if it is not eligible to bid on FTA-assisted transit vehicle procurements.

9. Good Faith Efforts Procedures for Contracts With DBE Goals (§ 26.53)

Considerations for administering the DBE Program in the context of a design-build contract were introduced by the Department in 1999, in § 26.53(e). In this section of the regulation, pertaining to contract goal attainment, the Department recognized that at the time a design-build contract is awarded, the project is minimally designed, and future subcontracting opportunities are unknown. In light of this, the Department acknowledged that specific DBEs that will subsequently be involved in the contract cannot reasonably be identified as required under paragraph (b)(2) of this section.

DBE Performance Plan (DPP)

To address this issue, in 2014, DOT revised § 26.53(b)(3) to provide that bidders in negotiated procurements, such as design-build procurements, may make a commitment to meet the DBE goal at the time of their response to initial proposals but provide the information required by paragraph (b)(2) of this section before the recipient makes its final contractor selection. However, challenges to identifying specific DBEs when the project is minimally designed, and subcontracting opportunities are unknown, remain at the time the recipient makes its final selection and even after contract award. Further, in the event the design builder is unable to meet the goal through committing to enough DBEs before the recipient makes its final selection, the design builder must submit documented good faith efforts. In practice, the Department has noted that by requiring the contractor to identify specific DBEs and document good faith efforts at this early stage of a design-build project, goal achievement is often attained through minimal DBE subcontracting commitments and large submissions of documented good faith efforts. Thus, as currently written, § 26.53(b)(3)(ii) may unnecessarily limit the participation of DBEs in a design-build project that likely includes an abundance of subcontracting opportunities.

Since 1999, design-build contracts have become much more prevalent, and best practices for administering the DBE Program in the context of this contract delivery method have been identified. The Department proposes to revise

§ 26.53(e), to align with current best practices which allow for continued DBE participation as the contract proceeds and definitive subcontracting opportunities arise.

The Department proposes to revise § 26.53(e), to direct recipients requesting proposals for a design-build project to require a design builder to submit a DBE Performance Plan (DPP) with its proposal. The DPP replaces the need to commit to specific DBEs or submit good faith efforts at the time of the proposal or prior to final selection. To be considered responsive, a contractor's DPP must include a commitment to meet the goal by providing details of the types of work and projected dollar amounts the contractor will solicit DBEs to perform. The DPP must also include an estimated time frame in which actual DBE subcontracts would be executed. Once the contract is awarded, the recipient must provide ongoing monitoring and oversight of the contractor to evaluate its good faith efforts to comply with the DPP and schedule. The parties may agree to revise the DPP throughout the life of the project, *e.g.,* replacing the type of work items the contractor will solicit DBEs to perform and/or adjusting the proposed schedule as long as the contractor continues to use good faith efforts to meet the goal. The Department believes this method will result in greater opportunities for DBEs to participate in design-build contracts.

In addition, DOT proposes clarifying § 26.53(b)(3)(ii) to address negotiated procurements outside of the context of design-build procurements.

Terminations

Since 1999, § 26.53(f)(1) has prohibited a prime contractor from terminating a DBE used in response to a contract goal without the recipient's prior written consent. The Department implemented protections in these situations to prevent abuse, *i.e.,* that absent a recipient's consent, a prime contractor may not terminate a DBE committed on the contract for convenience and then perform the work with its own forces. Also, since 1999, § 26.53(g) has required a prime contractor that has terminated a DBE to make good faith efforts to substitute another DBE to perform the same amount of work as the DBE that was terminated. In 2005, these termination and substitution provisions in § 26.53(f) and (g) were made applicable by § 23.25(e)(1)(iv) to concession specific goals. The Department expanded § 26.53(f)(4) and (5) in 2011 to require recipients to include a provision in its prime contract requiring the prime contractor or prime concessionaire to give written notice to the DBE or ACDBE subcontractor or sub-concessionaire (within five days) of its intention to request termination and/or substitution, and the reasons for the request. The prime contractor or prime concessionaire must also give the DBE or ACDBE five days to respond to the prime contractor's or prime concessionaire's notice and advise the recipient of any reasons the request should not be approved.

The 2014 revisions to § 26.53(g) expanded the good faith efforts requirements a prime contractor or prime concessionaire must follow to replace the terminated DBE or ACDBE. After making this change, the Department has learned that because the section above combines the terms ''terminate and/or substitute,'' some recipients permit a prime contractor or prime concessionaire that wishes to terminate a DBE or ACDBE in response to a contract or concession specific goal to seek written concurrence *only* for a DBE or ACDBE substitution. This action often omits the procedures a prime contractor or prime concessionaire is required to follow prior to *terminating* a firm. The required actions a prime contractor or prime concessionaire must take prior to terminating a firm provide the DBE or ACDBE with an opportunity to respond in writing to the recipient, indicating the reasons why it objects to the proposed termination. Requiring a prime contractor or prime concessionaire only to seek written concurrence for a proposed substitution deprives the DBE or ACDBE from these due process protections.

To avoid this unintended result, the Department proposes a minor revision to this section to eliminate the pairing of ''termination'' with ''substitution'' to clarify that proposed DBE and ACDBE terminations require the prime contractor or prime concessionaire to follow specific actions and provide a DBE or ACDBE an opportunity to respond before a recipient may provide written concurrence or denial. Under this proposed revision, the prime contractor or prime concessionaire would be permitted to propose a substitution only after a recipient's written concurrence with the proposed termination is received.

The revisions also make clear that a prime contractor's or prime concessionaire's desire to eliminate a portion of the work committed to a DBE or ACDBE as a condition of award would also constitute a ''termination'' in which the prime contractor or prime concessionaire and recipient must follow the above-referenced procedures.

10. DBE Supplier Credit (§ 26.55(e))

The Department first adopted regulatory provisions related to ''regular dealer'' suppliers in the 1987 DBE final rule (52 FR 39225 (Oct. 21, 1987)) (revising then-existing § 23.47(e) to § 23.47(e) and (f)). This regulation has gone through several revisions since then, most recently in 2014 (79 FR 59566 (Oct. 2, 2014)), and now appears as § 26.55(e). This section assists recipients in evaluating the appropriate credit to be given toward a contract goal (and a recipient's overall goal) when a DBE provides services as a manufacturer, supplier, or transaction facilitator; the latter is sometimes referred to as packager, broker, manufacturers' representative, or other firm that arranges or expedites transactions.

The Department requested stakeholder feedback on the regular dealer concept in the 2012 Notice of Proposed Rulemaking. See 77 FR 54592 (Sept. 6, 2012), which led to the 2014 final rule. The preamble to the 2014 final rule states: ''Specifically, we sought comment on: (1) how, if at all, changes in the way business is conducted should result in changes in the way DBE credit is counted in supply situations;? (2) what is the appropriate measure of the value added by a DBE that does not play a traditional regular dealer/middleman role in a transaction;? and (3) do the policy considerations for the current 60% regular dealer credit actually influence more use of DBEs as contractors that receive 100% credit?'' See 79 FR 59566, 59588 (Oct. 2, 2014).

In response to the 2012 NPRM, the Department received over 50 comments from prime contractors, DBEs, stakeholder associations, and recipients, many of which emphasized the need for additional clarification of, or changes to, the terminology used to describe regular dealers, middlemen, transaction expediters, and brokers. The Department responded that more analysis and discussion was needed to make informed policy decisions about how best to amend the regulations governing regular dealers and transaction facilitators; it committed to continuing the conversation through future stakeholder meetings.

On September 26 and 27, 2018, the Department held stakeholder meetings on the topic of ''regular dealers.'' Prime contractors, recipients, stakeholder associations, and DBEs, attended and many shared valuable information from their various perspectives. While the Department often hears that the ''regular dealer'' concept is outdated, does not reflect current industry practice, and

should be eliminated, most meeting contributors did not propose doing away with the regular dealer concept. Most acknowledged that even though the market has changed to allow prime contractors the ability to obtain goods through e-commerce without the need for a ''middle-man,'' many DBE suppliers reported that they rely upon the DBE Program and contract goals to maintain a viable business. Similarly, prime contractors conveyed their reliance on DBE suppliers to assist in meeting contract goals.

Based on the input from the stakeholder sessions and DOT's continued analysis of the role of the regular dealer provisions in the success of the DBE Program, DOT proposes several modifications to the regular dealer provisions designed to better align with modern business practices. Modifications to this section also include clarifying the definition of ''manufacturer'' and ''suppliers of specialty items.''

Limiting DBE Supplier Goal Credit

Since the beginning of the DBE Program in 1980, DOT has never placed a cap on the total amount of credit a prime contractor could obtain from supply contracts toward meeting a contract goal. DOT has long had a concern, however, that if prime contractors could frequently meet contract goals primarily through supply contracts with DBEs, opportunities for DBEs that perform other types of work would be too limited. DOT addressed this concern by allowing prime contractors to only count a certain percentage of the value of individual supply contracts toward contract goals. The Department's initial comprehensive Minority Business Enterprise regulation, issued in 1980, limited goal credit for a contract with a non-manufacturer supplier to 20 percent of the expenditures with the supplier, provided the supplier performed a commercially useful function (CUF).[10] In 1987, based on feedback from stakeholders, DOT adjusted the limit on goal credit to 60 percent of expenditures with a non-manufacturer supplier, determining that the adjusted figure would better balance the considerations that too low of a credit figure would unduly limit participation by MBE suppliers and that too high of a figure would unduly limit participation by other MBE firms (*e.g.,* construction contractors). The 60 percent figure was set in 1987.[11]

During the 2018 stakeholder meetings, some DBE participants conveyed that although crediting suppliers is limited to 60 percent of the value of the contract, some contractors, are still able to meet all or most of a contract goal through DBE suppliers, especially suppliers that provide high-cost or bulk items such as petroleum or steel, diminishing or even eliminating the need for the prime to employ additional DBE subcontractors on a project.

In consideration of the comments received, the Department proposes to revise this Part by adding a provision at § 26.55(e)(6) to limit the total allowable credit for a prime contractor's expenditures with DBE suppliers (manufacturers, regular dealers, distributors, and transaction facilitators) to no more than 50 percent of the contract goal. This revision would allow exceptions to the crediting limit (50 percent) for DBE material suppliers on a contract-by-contract basis (for example, certain contracts may be material-intensive), with the prior approval of the appropriate OA.

The following hypothetical is an example of how DBE credit should be applied under the proposed rule:

> A prime contractor seeks to bid on a $1M contract with a DBE goal of 20%. The prime contractor's total creditable portion of the commitment submitted to meet the contract goal-cannot exceed $100,000 in DBE material supplier participation: ($1M × 0.2 = $200,000 (total amount to meet goal)) ($200,000 × 50% = $100,000 (material supplier limit)). For example, the prime will use a DBE manufacturer of bricks for $50,000 and a regular dealer of steel costing $100,000. The regular dealer of steel can only count 60% of the cost of steel ($100,000 × 0.6 = $60,000). The total amount for DBE supplies is ($50,000 plus $60,000 = $110,000). The prime can only count $100,000.

Evaluating a Supplier's Designation as a Regular Dealer

The Department proposes to continue to credit 60 percent of the cost of supplies toward the contract goal (and recipient's overall goal) should a DBE meet the regular dealer requirements. This determination is made up of two components: (1) whether the DBE is an established business regularly engaged in the sale or lease of a product of the ''general character'' of that required under the contract; and (2) whether the DBE meets certain performance requirements in supplying the item.

The Department has learned that recipients often find it difficult to determine whether a DBE is ''regularly engaged'' in a supply activity, versus a firm that occasionally engages in such work or does so on an ad hoc or contract-by-contract basis. Similarly, recipients find it difficult to determine if the DBE regularly sells products of the ''general character'' of those called for in a specific contract. Moreover, recipients often wait to make these determinations until after the contract is awarded, during a CUF review in the field. While field inspectors performing CUF monitoring can evaluate a DBE supplier's performance, they are unlikely to have a method to determine if the DBE supplier meets the fundamental criteria to be considered a regular dealer.

In a design-bid-build contract, contractors/bidders must submit, either at the time of bid or within 5 days thereafter, information regarding the specific DBE firms to which they have committed to meet a contract goal. To determine if a contractor/bidder is eligible for contract award, recipients must evaluate these commitments to determine if the contractor/bidder met the goal either by sufficient subcontracting to DBEs and/or by demonstrating sufficient good faith efforts. See § 26.53(b). Contractor/bidder commitments often include the use of DBE suppliers and indicate 60 percent credit of the cost of the supplies toward goal achievement.

The Department has learned that many recipients accept the 60 percent commitment at face value without knowing whether the DBE ''regularly engages'' in the purchase and sale or lease of items, or those of the ''general character,'' that it is committed to supply for the contract at issue.

This face-value determination could affect whether a contractor/bidder has actually met the contract goal and is eligible for contract award. To avoid overcounting upfront toward contract goal achievement prior to contract award, and potential overcounting of goal credit in the field, the Department proposes to add a requirement in § 26.55(e)(2)(iv) for a recipient to establish a system to determine, prior to award, that the DBE supplier meets the fundamental characteristics of a ''regular dealer,'' *i.e.,* whether the committed DBE is ''regularly engaged'' in the purchase or sale of items, or those of the ''general character,'' called for in the contract. (In the race-neutral context, this information should first be considered prior to entering the DBE's participation into the recipient's reporting system, which usually occurs when subcontracts are approved.) To make such a determination, the

[10] See 45 FR 21172, 21181 (Mar. 31, 1980) available at *https://www.transportation.gov/sites/dot.gov/files/2020-06/1980%20Final%20Rule%2045%20Fed.%20Reg.%2020771%2C%2021172%28Mar.%2031%2C%201980%29.pdf.*

[11] See 52 FR 39225 (Oct. 21, 1987) available at *https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/1987-final-rule).*

recipient must evaluate whether the DBE supplier keeps sufficient quantities of the items in question and regularly sells the items to a sector of the public that demands such items.

To address the second component of the determination, the Department proposes under § 26.55(e)(2)(iv)(A) to add a requirement that a recipient establish a system, pre-award, to determine whether a DBE supplier submitted by the contractor/bidder as a ''regular dealer'' has demonstrated capacity and intent to perform as a regular dealer to ensure preliminary counting determinations are based on the DBE's capacity and intent to comply with the CUF requirements. Such procedures would be flexible but should include preliminary questions to identify whether the products sold or leased will be provided from the DBE's inventory or whether the DBE will have physical possession before they are sold or leased to the prime.

Under this same section, these procedures would also address the supply of bulk items by including questions on the disclosure of information to determine if the DBE will deliver the items using distribution equipment it owns and operates. This system is necessary to provide a sound basis for evaluating goal attainment prior to contract award and is necessary to support the likelihood that the DBE supplier will actually perform as a regular dealer in the field. Should the additional information a recipient receives result in a determination that the committed DBE supplier's services would not be entitled to the goal credit listed, the recipient would then determine that the contractor/bidder fell short of the goal and would then evaluate the bidder's good faith efforts to determine eligibility for contract award or subcontractor approval.

Ultimately, goal crediting would be made on a contract-by-contract basis contingent upon the outcome of a recipient's final CUF and counting determination of the DBE supplier's performance during the contract.

Drop-Shipping and Delivery From Other Sources

Many DBE suppliers said that the absolute prohibition on drop-shipping materials from the manufacturer to the desired location severely impacts their ability to compete with non-DBE suppliers. On the other hand, it is of concern to the Department and DBE subcontractors that a firm would receive 60 percent credit of the cost of supplies if the DBE's role is limited to making phone calls or sending emails to manufacturers or suppliers and asking them to drop-ship the materials to the desired location. The latter role is akin to a broker or transaction facilitator, and credit should be limited to the amount paid by the prime as a commission or fee for these services.

During the 2018 stakeholder meetings, the Department learned that the prohibition of drop-shipping materials is especially of concern to DBEs with distributorship agreements for the supply of bulk items. Those with distributorship agreements conveyed that these agreements with manufacturers are limited in nature, costly, and require them to assume significant risk of loss or damage. They stressed that the requirement that they use and operate their own distribution equipment to deliver the products is a barrier to their ability to compete fairly with other suppliers of bulk items.

Recognizing that a DBE with a distributorship agreement typically has more control regarding the quality of materials and bears significant risk, the Department proposes to add language to § 26.55(e)(3) to allow materials or supplies purchased from a DBE distributor that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question to receive credit for 40 percent of the cost of materials, including transportation costs.

In this section, a DBE distributor is defined as an established business that engages in the regular sale or lease of the general character of items specified by the contract and described under a valid distributorship agreement. This section further explains that a DBE distributor performs a CUF, entitling it to 40 percent credit, when it operates in accordance with the terms of its distributorship agreement; and with respect to shipping, the DBE distributor must assume the risk for lost or damaged goods. The Department proposes that recipients must review the language in distributorship agreements, prior to contract award, to determine their validity relevant to each purchase order/subcontract and the risk assumed by the DBE. Where the DBE distributor drop-ships materials without assuming risk, or otherwise does not operate in accordance with its distributorship agreement, credit is limited to fees or commissions.

Stakeholders also expressed concern regarding how to credit supplies from a DBE regular dealer that provides the major portion of items under the contract from its inventory, but must provide additional quantities ''of the general character'' of those kept and regularly sold, from other sources. The Department believes it places an undue burden on recipients to segregate minor quantities of an order delivered by sources other than the DBE, to eliminate them from regular dealer credit (60 percent). The Department proposes to clarify in § 26.55(e)(2)(iv)(A) that 60 percent credit of the cost of materials or supplies (including transportation costs) is appropriate when all, or the major portion, of the supplies under a purchase order or subcontract are provided from the DBE's inventory, and when necessary, any additional minor quantities, of the ''general character'' as those kept and regularly sold, are delivered from other sources (*e.g.,* the manufacturer). The Department proposes that the recipient's system mentioned above should include a means to evaluate at the commitment stage, prior to contract award, the type and quantity of items the DBE intends to have delivered by other sources.

Negotiating the Price of Supplies

The Department made clear that to receive credit for supplying materials, a DBE must demonstrate ownership by negotiating the price of supplies, determining quantity and quality, ordering the materials, and paying for the materials itself. Some DBE suppliers conveyed that they are unable to compete with those prices negotiated by larger companies with established relationships with manufacturers, or who purchase supplies regionally in bulk; and that this scenario is a barrier for DBEs to fairly compete. They asked us to consider eliminating the need to negotiate price for certain bulk items, and still allow 60 percent goal credit. We considered this request but ultimately do not support it. The Department reaffirms the following statement set forth in official guidance posted on May 24, 2012:

> The Department understands that there may be some kinds of transactions in which no subcontractor performs all of the four required functions (*e.g.,* a prime contractor decides who will supply a commodity and at what price, with the result that a subcontractor cannot negotiate the price for the item). In such situations, the way the transaction occurs does not lend itself to the performance of a CUF by a DBE subcontractor, and it is not appropriate to award DBE credit for the acquisition of the commodity by the DBE subcontractor. All the DBE has done with respect to acquiring the commodity is to carry out, in a ministerial manner, a decision made by the prime contractor.[12]

[12] Official FAQs on DBE Program Regulations—Commercially Useful Function *https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/dbe-guidance/official-faqs-dbe-program-regulations-49-cfr-26#Commercially.*

DBE Manufacturers

The Department has learned from the OAs that the definition of a DBE manufacturer should be clarified to assist recipients in evaluating whether a DBE is a manufacturer, allowing 100 percent credit of the cost of supplies and materials it manufactures toward a contract goal (and a recipient's overall goal). In response, we propose revising § 26.55(e)(1) to clarify the meaning of the term ''manufacturer.'' A DBE is a manufacturer if it owns or leases and operates a factory or establishment that produces the materials, supplies, articles, or equipment required under the contract. Manufacturing also includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. A DBE does not meet the definition of a manufacturer, however, when it makes minor modifications to the materials, supplies, articles, or equipment.

Suppliers of Specialty Items

The Department proposes a new provision at § 26.55(e)(2)(iv)(C) to address a common scenario in which a DBE supplies items that are not typically stocked due to their unique characteristics (*e.g.,* limited shelf life, or specialty items requested by contractors on an ad hoc basis). We consider a DBE supplier that operates in this manner as a regular dealer of bulk items that can receive 60 percent credit for the items only if it owns and operates its own distribution equipment. We propose that the recipient include in its pre-award system procedures to determine whether the DBE supplier of such items will operate its own distribution equipment in order to be entitled to 60 percent credit.

Subpart D—Certification Standards

11. General Certification Rules (§ 26.63)

To begin, we propose changing ''recipient'' to ''certifier'' throughout subparts D and E because firms often do not know that ''recipient'' refers to ''certifier.''

Currently, § 26.73 is a catch-all section that mostly provides broad certification requirements. The overall objective of the proposed revisions is to create more succinct and clearer paragraphs for rules. For this reason, we propose changing the title of this section from ''What are the other rules affecting certification?'' to ''General Certification Rules;'' and redesignating § 26.73 to § 26.63. These changes provide context to the certification rules that follow and more accurately reflect the section's purpose.

The proposal would restate and compile the rules discussed in current paragraphs (a) through (d) and (f) through (g) into new paragraph (a). The Department believes that the new paragraph (a) would increase readability, making the rules more accessible to the general public.

The most notable change in proposed § 26.63(b) pertains to firm's owned and controlled by a parent or holding company. The current § 26.73(e) states that a DBE must be owned by individuals and not another firm. However, § 26.73(e)(1) provides an exception to the general rule and states that ''if socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization, or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all [other certification] requirements.'' § 26.73(e)(1).

Because the text of current § 26.73(e) does not clearly define ''parent,'' ''holding company,'' or ''tax, capitalization or other purposes,'' the ambiguity created by these terms makes the entire provision difficult to apply. The Department interprets the exception to the general rule to allow a DBE to be owned by another firm so long as the parent or holding company is owned and controlled by disadvantaged individuals. The proposal takes this approach. As we acknowledged in the 1999 preamble when we issued the rule, ''[t]he purpose of the DBE Program is to help create a level playing field for DBEs. It would be inconsistent with the program's intent to deny DBEs a financial tool that is generally available to other businesses.'' (64 FR 5096, 5120 (Feb. 2, 1999))

Contrary to the goal stated in the preamble, the ''general rule'' in § 26.73(e) unduly excludes the disadvantaged owner from indirectly owning a firm through another entity—a flexibility that is available to non-DBEs. This restriction arguably puts the DBE at a competitive disadvantage with its non-disadvantaged competitors.

We are aware that the more complex a firm's ownership structure is, the more difficult it is for the certifier to assess its eligibility. Our proposal would permit only one tier of ownership above the subsidiary DBE. No firm would be certified based on ownership of a business, control on the grandparent level (*i.e.,* a DBE cannot be 51 percent owned by firm B, which is 51 percent owned by firm C, which is owned by the disadvantaged owner).

Also, the firm would still be required to meet all other certification requirements, including the PNW limit and business size standard, which may create eligibility issues related to the outside business interests and affiliation counting rules. The firm's refusal to provide pertinent information about its parent or holding company would be grounds for denial or decertification for failure to cooperate.

The proposal also makes technical corrections to the portions of the section concerning Indian tribes and Alaska Native Corporations.

Overall, proposed § 26.63 simplifies and removes ambiguous language that exists within the current rule. It preserves common business practices while securing program integrity.

12. Business Size (§§ 26.65, 23.33)

Size standards in the DBE and ACDBE regulation are important for a number of reasons. They implement the statutory requirement that participants be small businesses. They provide a means to ensure that participation in the DBE and ACDBE Programs is not necessarily of indefinite duration: if a firm grows to exceed the applicable size standard, it ceases to be eligible for the applicable Program. The size standards are calibrated to help meet the objectives of the Programs, including permitting ACDBEs to compete in the transportation and airport concessions markets.

To be classified as a small business under the DBE Program, a business's gross receipts (including those of its affiliates) must satisfy two size standards. Per § 26.71(n), DBEs must meet a size limit for each North American Industry Classification System (NAICS) code corresponding to the firm's work. The size standard represents the highest amount of receipts a firm can have to be considered small. For example, an architecture firm, assigned NAICS Code 541310, cannot exceed $11 million in average annual gross receipts (SBA's size limit for NAICS Code 541310) and still be considered small. DBEs must also meet a secondary size standard prescribed in the Department's surface reauthorization legislation, known as the statutory or secondary gross receipts cap. This provision is currently implemented through § 26.65(b) and (c), and to qualify as a DBE, a firm cannot exceed the size cap prescribed by this regulation. The NAICS code standard cap is expressed in either millions of dollars or number of employees whereas the statutory gross receipts cap is

measured in average annual gross receipts.

The Federal Aviation Administration (FAA) Reauthorization Act of 2018 (Pub. L. 115–254) removed the secondary gross receipts cap under § 26.65(b) for purposes of eligibility for FAA-assisted work. Therefore, the revised rule published on December 14, 2020, reflects that the secondary gross receipts cap of § 26.65(b) and (c) does not apply for purposes of determining a firm's eligibility for FAA-assisted work.[13]

Size limits are similarly placed on ACDBEs and firms applying for ACDBE certification, but under § 23.33, these are not currently aligned with the SBA limits based on individual NAICS codes. Section (a) of the current provision requires recipients to treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous 3 fiscal years does not exceed $56.42 million. Unique types of businesses have size standards that differ—Banks and financial institutions; car rental companies; pay telephone companies; and automobile dealers.

Changing the Measurement for the NAICS Code Size Calculations From 3 to 5 Years

Section 1101(e)(3) of the BIL states that for purposes of the DBE Program's definition of a small business, the term is defined as used in section 3 of the Small Business Act (15 U.S.C. 632). The Small Business Runway Extension Act of 2018 (SBREA) (Pub. L. 115–324) amended Section 3 of the Small Business Act, which in turn changed the method used by the SBA to calculate business size under 13 CFR part 121. The SBA implemented this change on January 6, 2020, through a final rule.[14] This rule changed the time period for calculating average annual gross receipts under 13 CFR part 121 from 3 years to 5 years but provided firms with the option to use either the 3-year calculation or the 5-year calculation until the 5-year period became mandatory on January 6, 2022.

The SBA final rule applies to FHWA, FTA, and FAA-assisted projects because the DBE regulation requires recipients to use the current SBA business size standard(s) found in the SBA regulation. On October 19, 2020, the Department issued guidance stating that until January 6, 2022, DBEs participating in FHWA, FTA, and FAA-assisted projects may choose between using a 3-year averaging period or a 5-year averaging period for the purposes of meeting the requirements of the DBE Program, as described in § 26.65(a), and after that date, the 5-year averaging period would become mandatory.[15]

The Department proposes to incorporate the 5-year calculation changes in § 26.65(a) to meet these statutory requirements. Under the proposed additional language, a firm would be eligible as a DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by the SBA regulation at 13 CFR 121.104, over the firm's previous five fiscal years.

Statutory Gross Receipts Cap

For the statutory DOT size cap found at § 26.65(b), DBEs are still subject to the 3-year averaging period because this 3-year period is specifically prescribed by the BIL. Therefore, while a DBE firm may elect to submit its average annual gross receipts for either the last 3 years or last 5 years to show it meets the size standard for a NAICS code under 13 CFR part 121, only the last 3 years may be considered for determining whether the firm also meets the DOT size standard prescribed by § 26.65(b).

Future Adjustments and Technical Amendments

In December 2020, the Department removed the requirement from part 26 to publish a **Federal Register** document informing the public of inflationary adjustments. In this proposed rulemaking, the Department will make a similar change to part 23 and will strike this language from paragraph (c) of § 23.33. Like § 26.65(c), the proposed § 23.33(c) language states that the Departmental Office of Civil Rights will publish the annually adjusted number on its web page.[16]

We propose adding the word ''passenger'' to car rental companies, replacing ''automobile dealer'' with ''new car dealer,'' and remove reference to pay telephone operators. The size standards for these types of firms (with the proposed new titles) will remain the same, *i.e.,* $1 billion in assets for banks and financial institutions; $75.23 million average annual gross receipts from passenger car rental companies' 5 previous fiscal years; and 350 employees for new car dealers.

We also propose removing the regulatory requirement for the Department to adjust the ACDBE size standards every two years. The Department last adjusted the ACDBE size standards in June 2012. We seek comments on whether any inflationary adjustment to the ACDBE size standards is needed at this time. The standards far exceed the SBA small business size limits placed on these types of businesses, and any adjustment must be made in recognition of the overall intent to narrowly tailor all program requirements. We are contemplating whether there is a need to further raise the current size standards, particularly given that we propose changing the period of measurement under § 23.33 from 3 to 5 years. It is the Department's view that raising the standards too high could result in smaller firms seeking to enter the concession industry having to compete with larger firms for space that is already limited in opportunities because of limited airport opportunities.

The Department seeks data on whether the additional categories with different size standards, like car rental companies, are still needed and if the size standards applicable to these categories require an adjustment. If proponents advise that an adjustment is needed, should the Department again use an inflation rate tied to purchases by state and local governments as it does in part 26 adjustments? We currently use data from the Department of Commerce's Bureau of Economic Analysis (BEA). The BEA measures constant dollar estimates of state and local government purchases of goods and services by deflating current dollar estimates by suitable price indexes. These indexes include purchases of durable and non-durable goods, and other services.

Gross Receipts of ACDBE Affiliates and Joint Venture Partners

The Department is proposing to address how an ACDBE must account for annual gross receipts of affiliates and joint ventures for size purposes, as provided in 13 CFR 121.104(d) and § 121.103(h)(3) of the SBA regulations, respectively. The Department will add a new paragraph (d) to § 23.33, making clear that an ACDBE that is a party to a joint venture must include in its gross receipts its proportionate share of receipts generated by the joint venture.

13. Personal Net Worth (PNW) Adjustment

Section 26.67(a)(1) provides a presumption of social and economic disadvantage for citizens (or lawfully admitted permanent residents) who are

[13] See 85 FR 80646 (Dec. 14, 2020) available at *https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/december-14-2020-final-rule-gross-receipts.*

[14] See 84 FR 66561 (Dec. 5, 2019) available at *https://www.federalregister.gov/documents/2019/12/05/2019-26041/small-business-size-standards-calculation-of-annual-average-receipts.*

[15] See ''DBE/ACDBE Size Standards'' at *https://www.transportation.gov/DBEsizestandards.*

[16] See *https://www.transportation.gov/DBEsizestandards.*

women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA. However, individuals who belong to a group(s) whose members are presumed socially and economically disadvantaged (SED) could be too wealthy to be considered economically disadvantaged for purposes of the DBE Program. As a mechanism for excluding those individuals from the DBE Program, in 1999, the Department adopted a PNW cap of $750,000. A PNW cap means that, regardless of membership in a group whose members are presumed SED, any individual whose PNW exceeds the PNW cap is not considered economically disadvantaged. This helps ensure that the DBE Program is narrowly tailored and that only those individuals who are actually economically disadvantaged are eligible for the DBE Program.

The Department's 2011 final rule raised the PNW limit from $750,000 to $1.32 million to keep up with inflation.[17] The Department now proposes raising the limit to $1,600,000 ($1.60 million) for the DBE and ACDBE Programs, based on a number of factors. In addition, the Department proposes establishing a method for adjusting the PNW cap in the future that would allow the DBE and ACDBE Programs to adjust the PNW cap in a timely and responsive manner while avoiding the delay and the administrative burden of a formal rulemaking.

The DBE Program adjusts the traditional definition of total personal net worth by excluding the disadvantaged owner's interest in the firm in question, equity in the owner's primary residence, and 50 percent of any assets held as community property with a spouse or domestic partner. The existence of a PNW cap highlights a tension between the DBE Program's multiple objectives. If the PNW cap is set too high, the program would include business owners who are not in fact economically disadvantaged. If the PNW cap is set too low, the program will exclude some truly disadvantaged business owners who could benefit from participating in the program and whose participation would advance the program's progress towards achieving equity in Federal contracting. A 2007 report commissioned by the Congressional Black Caucus Foundation, ''Increasing the Capacity of the Nation's Small Disadvantaged Businesses,'' points out that businesses need resources to build capacity and be competitive, thus a PNW cap that is too low will limit the success of participating businesses.

In 2019, the Federal Aviation Administration (FAA) conducted listening sessions related to this rulemaking. Commenters noted that the current $1.32 million PNW cap hinders the success of the ACDBE Program. They noted that restaurants in airports can have very high upfront financing needs related to build-out costs, covering initial operating costs, and the need to refresh their facilities midway through a typical 7 to 10-year lease. In addition, because of the nature of those types of expenses (and possibly the risk inherent with the airport concession industry), banks require a high amount of collateral for loans to finance those upfront expenses.[18] Consequently, a PNW cap that is too low means that the business owners who have the means to provide the collateral for airport concessions with high upfront investment requirements are generally not eligible to participate in the ACDBE Program. Note, however, that the business owner's total household net worth can be used as collateral for a loan, so that while the PNW as defined by the program must be below the rule's cap, the amount available to use as collateral might be higher than the cap due to how PNW is calculated for the DBE and ACDBE Programs.

Rationale for $1.60 Million Adjustment

As part of this proposed rulemaking, the Department conducted an original analysis to establish an appropriate PNW cap. We recognize that the determination of economic disadvantage is a comparative exercise, not an absolute determination made in isolation.[19] In this analysis, the determination of an economically disadvantaged business is based on comparing the business owner to other business owners, since the wealth of business owners generally is likely higher than the wealth of the general population. Further, this analysis focuses on the wealth of business owners who are not presumed to be socially and economically disadvantaged: White, non-Hispanic men. To make this comparison, this analysis uses data from the 2019 Survey of Consumer Finances (SCF) to analyze the distribution of PNW among business owners to determine where a new PNW cap should be set.[20]

In the SCF, the race and ethnic group for a household is based on the identification of the original respondent to the survey. The employment status and other demographic descriptors are based on the reference person for the family. The reference person used for the household in the SCF data is the male in an opposite-sex couple, the older person in a same-sex couple, or the individual if the household is led by a single person. The SCF data allows for identification of the following race and ethnic group categorizations: White, Non-Hispanic; Black, Non-Hispanic, Hispanic, and Other. ''Other'' includes individuals who identify as Asian, American Indian, Alaska Native, Native Hawaiian, Pacific Islander, other race, and all respondents reporting more than one racial identification.[21] Table 1 shows that the mean net worth of White, Non-Hispanic households is roughly 6 to 7 times higher than for Black, Non-Hispanic and Hispanic households. Even at the highest wealth levels, the disparity exists: the wealth of the top 10 percent of White households exceeds the wealth of the top 10 percent of Black, Non-Hispanic, and Hispanic households by a factor of 5.

[17] The $750,000 PNW cap was adjusted using the CPI from the base year of 1989. As explained in previous rulemakings, 1989 was used as the base year because this was the year the Small Business Administration initially proposed the $750,000 PNW cap. See January 2011 final rule, available at *https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/dbe-laws-policy-and-guidance.*

[18] Fed. Aviation Admin., ''49 CFR Part 23 Review Virtual Virtual Listening Session Subpart C'' (Apr. 4, 2019).

[19] As explained in the 1983 final rule, ''[when] considering the economic disadvantage of firms and owners, it is important for recipients to understand that they are making a comparative judgment about relative disadvantage. Obviously, someone who is destitute is not likely to be in any position to own a business. The test is not absolute deprivation, but rather disadvantage compared to business owners who are not socially disadvantaged individuals and firms owned by such individuals.'' 48 FR 33432, 33452 (July 21, 1983) available at *https://www.transportation.gov/sites/dot.gov/files/docs/Final%20Rule%2C%20July%2021%2C%201983.pdf.*

[20] The Survey of Consumer Finances (SCF) is a cross-sectional survey of primary economic units (PEU) in the United States conducted every three years from 1983 to 2019. The PEU consists of the economically dominant individual or couple and all individuals in the household that are financially dependent on the individual or couple. The SCF is sponsored by the Federal Reserve Board of Governors and the U.S. Department of the Treasury. The survey includes information on demographics, income, assets, and debts, among other topics. The SCF presents five replicates of each record as a method of approximating missing values in the data. Thus, the number of records in the public dataset is 28,885, five times more than the number of households that responded to the survey (5,777). See *https://www.federalreserve.gov/econres/scfindex.htm.*

[21] Codebook for 2019 Survey of Consumer Finances, Board of Governors of the Federal Reserve System, assessed at *https://www.federalreserve.gov/econres/files/codebk2019.txt.*

TABLE 1—TOTAL NET WORTH OF THE HOUSEHOLD BY RACE AND ETHNIC GROUP IN 2019

[2019 Dollars]

Race & ethnicity	Total number of households	Mean	Median	90th percentile
ALL	*5,777*	*$746,821*	*$121,774*	*$1,219,499*
White, Non-Hispanic	3,980	980,549	188,985	1,610,000
Black, Non-Hispanic	679	142,330	24,100	324,901
Hispanic	490	165,541	36,031	333,500
Other	627	656,603	74,500	1,164,100

Source: 2019 SCF.

The current PNW calculation for the DBE and ACDBE Programs allows the firm owner to omit the value of their primary residence and the value of the business for which the owner is applying for certification. In addition, the PNW definition includes only the assets of the firm owner, meaning that only half the value of any assets held jointly by the owner and their spouse (community property) are included in the calculation of PNW. Finally, applicants are instructed only to report the current value of any retirement accounts, after any early withdrawal penalties and applicable taxes are subtracted. During stakeholder engagement events and compliance reviews, the Department received many comments that the calculations required to compute the applicable taxes and penalties on retirement accounts is highly burdensome to applicants and certifiers. Those calculations require a great deal of information including what portion of the account is the initial contributions versus subsequent capital gains or interest earned, applicable state and Federal income tax rates, and applicable state and Federal capital gains tax rates. In response to those comments, the Department proposes to exclude the full balance of retirement accounts in calculating PNW.

In addition, the Department proposes to increase the PNW cap to $1.60 million in order to account for factors such as inflation, since the PNW cap was last updated 10 years ago. The Department's proposal to make future adjustments to the PNW cap is discussed later in this section.

The analysis underlying the proposal to increase the PNW cap constructs a proxy measure for PNW under the proposed definition of PNW for the DBE and ACDBE Programs. Using the 2019 SCF data, the proxy measure, shown in Equation 1, calculates PNW using measures of total household net worth, home equity (value in primary residence minus any home secured debt), active business equity (equity the individual owns in a business they actively manage), and current balance of retirement accounts.[22] The calculation is performed separately for single individuals versus couples in order to account for adjustments for community property made in the definition of PNW for the DBE and ACDBE Programs. Only 50 percent of any jointly held assets between a couple (community property) should be accounted for in an individual's PNW according to that definition. Equation 2 shows the calculation for the proxy measure for PNW under an alternative proposal (not being proposed in this NPRM), which would include the full amount of the retirement account balances in the calculation of PNW. In the SCF, net worth is reported using the current balance of any retirement accounts with no adjustments made for early withdrawal penalties or taxes.

If single, PNW = Net Worth - Home Equity - Active Business Equity - Retirement Accounts
If married or living with partner, PNW = (Net Worth - Home Equity - Active Business Equity - Retirement Accounts) / 2

Equation 1. Personal Net Worth Calculation Under Proposal

If single, PNW = Net Worth - Home Equity - Active Business Equity
If married or living with partner, PNW = (Net Worth - Home Equity - Active Business Equity) / 2

Equation 2. Personal Net Worth Calculation Under Proposal

[22] The SCF data does not allow a distinction between all of an applicant's active businesses and the sole business the applicant might choose to certify as a DBE or ACDBE. Therefore, the PNW proxy measure used here removes the total value of all active businesses. As a result, this proxy measure for PNW could be under-estimating an applicant's true PNW.

In addition, the analysis includes only White, Non-Hispanic households with male reference persons identified as owning a business and who indicated they were self-employed or in a partnership as their occupational status. The focus is on self-employed business owners because the intent is to identify a comparison group for business owners who are likely to participate in the DBE and ACDBE Programs.

Table 2 shows the percentile distribution related to the estimated PNW calculation from the 2019 SCF for the proposal.

TABLE 2—PERCENTILE DISTRIBUTION OF THE PERSONAL NET WORTH FOR MALE, WHITE, NON-HISPANIC, SELF-EMPLOYED, BUSINESS OWNERS, AS CALCULATED UNDER THE PROPOSAL

[2019 Dollars]

Percentile	PNW as calculated under proposal
10th	−$50
20th	11,610
30th	24,050
40th	48,300
50th	77,875
60th	157,500
70th	265,000
80th	558,950
90th	1,601,500
95th	3,757,750

Source: 2019 SCF.

Under the proposal that the Department is recommending in this NPRM, retirement accounts (along with home and business equity) would be removed from the calculation of PNW. The 90th percentile of PNW for male, White, Non-Hispanic self-employed business owners is roughly $1.60 million, which is $1.04 million higher than the 80th percentile of $0.56 million, which is in turn just $0.29 million greater than the 70th percentile. Using the proposed definition of PNW with exclusion of all retirement accounts, the Department proposes to set the PNW cap at the 90th percentile of the group of male, White, Non-Hispanic, self-employed business owners ($1.60 million). Determining a threshold beyond which an individual is considered to have accumulated wealth too substantial to need the program's assistance, we used the 90th percentile to identify a high level of wealth or income, which is a common convention.[23] Choosing a substantially lower threshold, such as the 80th percentile, would result in a cap that is lower than the current cap and would act to remove eligible businesses that are currently participating in the DBE and ACDBE Programs. Choosing a substantially higher threshold would increase the possibility that the program would no longer be sufficiently narrowly tailored. While the Department proposes to use the 90th percentile, it acknowledges that using a different threshold amount could also meet the goals of the program and requests comment from the public on how an appropriate PNW cap should be set.

Data from the 2019 SCF suggests that between 88.7 and 90.8 percent of self-employed business owners who are presumed to be socially and economically disadvantaged (*i.e.,* individuals who are women, Hispanic, or non-White) have a PNW lower than the current PNW cap as PNW is currently defined.[24] Under the proposed cap of $1.60 million, 92.6 percent of that group would fall under the cap, an increase of 2.0 to 4.4 percent.

TABLE 3—COMPARISON OF CURRENT AND PROPOSED METHODS

Label	Description	Cap amount
Current Method	Applicants must calculate current value of retirement accounts by determining any early withdrawal penalties and applicable taxes.	$1.32 million.
Proposed Method	Full current retirement account balance excluded from PNW calculation	$1.60 million.

Periodic Adjustments to the PNW Cap

The previous adjustment of the PNW cap in January 2011 used the CPI to reflect the increase in prices due to inflation. However, while household net worth is expected to grow in nominal terms over time, simply due to inflation, it is also subject to additional influences. For instance, the 2008 financial crisis significantly reduced household net worth but a CPI adjustment would not account for that change caused by the financial crisis. In consecutive periods of sustained economic growth that raises the net worth of all business owners in real terms (after adjusting for inflation), an adjustment using only the CPI could maintain a PNW cap that remains too low over time.

One alternative to using a CPI adjustment includes using data on the changes in aggregate household net worth data published quarterly by the Federal Reserve.[25] Another alternative is to calculate the 90th percentile of PNW for self-employed business owners using future editions of the SCF, which is published every three years. An advantage of using the Federal Reserve data is that the information is readily and frequently available whereas analysis of the SCF requires specialized statistical programming skills and the updates would be limited to a 3-year cycle.

Table 4 compares the nominal growth rates inferred by the CPI, the Federal

[23] See Bricker, Goodman, Moore and Volz. ''Wealth and Income Concentration in the SCF: 1989–2019'' in ''FEDS Notes'' (Sept. 28, 2020) available at *https://www.federalreserve.gov/econres/notes/feds-notes/wealth-and-income-concentration-in-the-scf-20200928.htm;* see also Credit Suisse, ''World Wealth Report 2020,'' at p. 29 and available at *https://worldwealthreport.com/resources/world-wealth-report-2020/;* see also Kochar and Cilluffo, ''Income Inequality in the U.S. Is Rising Most Rapidly Among Asians,'' Pew Research Center (July 12, 2018) available at *https://www.pewresearch.org/social-trends/2018/07/12/income-inequality-in-the-u-s-is-rising-most-rapidly-among-asians/.*

[24] The range on this estimate is the result of lack of information in the SCF on how to appropriately adjust the current balances of retirement accounts for early withdrawal penalties and taxes. The lower end of the estimated range (88.7 percent) assumes that the entire balance of retirement accounts is counted toward the PNW cap while the upper end (90.8 percent) assumes that no portion of retirement account balances are counted toward the PNW cap. The Department believes that the true value is likely closer to 88.7 percent than 90.8 percent because the deduction for early withdrawal penalties and taxes is likely to be less than 50 percent, but a more precise estimate is not possible with the available information.

[25] Federal Reserve, ''Financial Accounts of the United States; Balance Sheet of Households and Nonprofit Organizations Table Z.1,'' available at *https://www.federalreserve.gov/releases/zl/dataviz/zl/balance_sheet/chart/.*

Reserve measure of total household net worth, and the historic information of the 90th percentile of PNW (calculated with exclusion of retirement accounts) for male, White, non-Hispanic, self-employed business owners from previous editions of the SCF. While the SCF data might be considered the most precise in terms of accurately representing the proposed cap based on the 90th percentile of self-employed business owners, the Federal Reserve data historically shows very similar dynamics and is more accessible because it is easily computed and is updated more frequently. The CPI does not adequately reflect the underlying dynamics of household net worth. Using the CPI to adjust the cap going forward would result in a cap that may block participation from a growing number of firms over time. Therefore, the Department proposes to make future adjustments to the PNW cap using growth in Federal Reserve measure of total household net worth from ''Financial Accounts of the United States: Balance Sheet of Households and Nonprofit Organizations Table Z.1'' using 2019 as the base year.

TABLE 4—GROWTH OF CPI, FEDERAL RESERVE TOTAL HOUSEHOLD NET WORTH, AND PERSONAL NET WORTH 90TH PERCENTILE OF WHITE, NON-HISPANIC, MALE, SELF-EMPLOYED BUSINESS OWNERS FROM THE SCF

[Indexed to 1992]

Year	CPI	Federal Reserve total household net worth	Personal net worth 90th percentile from SCF
1992	100.0	100.0	100.0
1995	108.6	118.2	105.8
1998	116.2	154.1	183.0
2001	126.2	184.4	237.1
2004	134.6	228.2	327.3
2007	147.8	287.7	411.5
2010	155.4	263.9	325.3
2013	166.0	319.4	535.3
2016	171.1	383.5	498.0
2019	182.2	467.4	514.2

Based on the above analysis, the proposed rule would simplify the PNW calculation by excluding retirement accounts and changing the PNW cap for the DBE and ACDBE Programs from $1.32 million to $1.60 million. The proposed rule would increase that cap every 5 years using growth in the Federal Reserve measure of total household net worth from ''Financial Accounts of the United States: Balance Sheet of Households and Nonprofit Organizations Table Z.1,'' using 2019 as the base year. If household net worth were ever to decline by that measure, the Department would not revise the PNW cap and thereby avoid a downward adjustment of the PNW. A downward adjustment of the PNW cap might cause certain firms to be decertified due to circumstances beyond their control and would be an undesirable outcome for the DBE and ACDBE Programs.

Note that the above analysis is broad-based in that it analyzes the distribution of PNW for all self-employed business owners and does not focus on the types of businesses that would be expected to be involved in the DBE and ACDBE Programs. The SCF does not contain sufficient detail on the industry of the business owners to permit a more focused analysis. There may be additional industry-specific factors that warrant consideration, and we invite comment on what factors could be considered for further analysis.

The Department requests comment on the proposed $1.60 million PNW cap and seeks comment on whether the cap for the ACDBE Program should be different than the cap for the DBE Program. If recommending that the PNW cap be different than $1.60 million, wet request data and information that can be used to support an alternative PNW cap.

Rules for Reporting PNW

The Department proposes revisions for clarity and enhanced specificity. Our goal overall is to remove the ambiguity and confusion that we have seen caused by the current rules for reporting PNW. To start, we would like to remove any consideration of state marital laws or community property rules when calculating the socially and economically disadvantaged owner's (SEDO) equity in the primary residence. It is neither appropriate nor practicable for the Department to interpret state marital laws or community property rules. Every state has its own laws and rules. The DBE Program is a Federal program governed by a Federal regulation.

We are also proposing a detailed explanation of ''household contents'' in § 26.68(e) because of disputes we have seen between owner-applicants and certifiers. One hundred percent of the contents of the SEDO's primary residence belong to the SEDO. The exception is if the SEDO's spouse or domestic partner cohabits with the SEDO in the SEDO's primary residence; in that case, fifty percent of the value of all household contents is attributable to the SEDO, regardless of who acquired them and regardless of whether they were acquired before or after cohabitation.

Motor vehicles of any type belong to the individual who holds title to the vehicle. We would like comments on how to treat leased vehicles under the definition of ''household contents.'' Specifically, should a vehicle leased in the SEDO's name be considered an asset or should it be considered a liability?

The general purpose behind the proposed asset transfers rule is to prevent individuals from offloading wealth immediately before or concurrent with applying for DBE certification to stay within the PNW limit. To what extent might there be administrative difficulties in implementing the proposed rule that could outweigh the intended benefits?

In addition, as stated above, we would like to exclude all retirement assets from PNW calculations. Our rationale is twofold. The current rule states that the value of all assets held in vested pension plans, Individual Retirement Accounts, 401(K) accounts, etc. must be included, minus the tax and interest penalties that would accrue if the asset were distributed at the present time. The Department has witnessed multiple conflicts among certifiers, firm owners, accountants, etc. about how to

determine the amount of tax and interest penalties. To eliminate this problem, and perhaps more importantly, to avoid the unintended consequence of penalizing individuals from saving for retirement, we propose fully excluding all retirement assets.

14. Social and Economic Disadvantage (§§ 26.5, 26.63, and 26.67)

Section 26.5 currently defines ''socially and economically disadvantaged individual'' as any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of the individual's identity as a member of a group and without regard individual qualities. The social disadvantage must stem from circumstances beyond the individual's control. These individuals who are members of one or more of the following groups are rebuttably presumed to be socially and economically disadvantaged (SED): Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, women, and any additional groups whose members are designated as SED by the Small Business Administration (SBA), at such time as the SBA definition becomes effective.

Evidence and Rebuttal of Social Disadvantage

Section 26.61(c) states that certifiers must rebuttably presume that members of the designated groups identified in § 26.67(a) are socially and economically disadvantaged (SED). This means that individuals who are members of the designated groups do not have the burden of proving that they are (SED). In order to obtain the benefit of the rebuttable presumption, individuals must only submit a signed, notarized statement that they are a member of one of the groups in § 26.67(a). Applicants do, however, have the obligation to provide certifiers with information concerning their economic disadvantage. See § 26.67.

Section 26.63(a)(1) provides that if, after reviewing the signed, notarized affidavit of membership in a § 26.5 presumptively disadvantaged group, the certifier has a well-founded reason to question the individual's claim of membership, the certifier must require the individual to present additional evidence of group membership. See §§ 26.61(c) and 26.63(b)(1). The current rule states that in making such a determination, the certifier must consider whether the person has held himself/herself/themselves out to be a member of the group over a ''long period of time'' prior to applying for certification and whether the person is regarded as a member of the group by the relevant community. The certifier may require the individual to produce additional evidence of group membership. If, after reviewing the evidence, the certifier determines that the individual is not a member of a § 26.5 group, the individual may elect to apply for certification by demonstrating social and economic disadvantage on an individualized basis.

Current § 26.67(a)(1) states that certifiers must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other individuals, as defined by the SBA, are SED. Each owner claiming the presumption must submit a signed, notarized affidavit as evidence of the claim. Section 26.67(b)(2) provides that if a certifier has a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged, the certifier may, at any time, start a proceeding to determine whether the individual's presumption of social and economic disadvantage should be deemed rebutted. Section 26.67(b)(3) explains that the certifier bears the burden of demonstrating, by a preponderance of the evidence, that the individual is not SED. The certifier may, however, require the individual to produce information relevant to the determination of the individual's disadvantage.

The Department acknowledges there has been confusion caused by the definition of SED in § 26.5, the provisions governing group membership determinations, in § 26.63 and the rebuttal of social and economic disadvantage provisions in § 26.67.

To more clearly address group membership, the presumption of social and economic disadvantage that attaches to group membership, and the rebuttal of presumed social and economic disadvantage, we propose several changes. Current § 26.63(b)(1) explains that when questioning an individual's group membership, the certifier ''must consider whether the person has held himself out to be a member of the group *over a long period of time* prior to application for certification . . .'' (italics added). Without that requirement, a White male (for example) could suddenly discover he has Black ancestry and apply for DBE certification based on that recent discovery—even though he has never held himself out as Black, and he would likely have no evidence that the Black community regards him as a member of the Black community. The Department has not previously defined what constitutes ''a long period of time.'' Because of confusion expressed by certifiers and applicants alike, the Department now proposes defining ''a long period of time'' as a period of at least five years. We also propose adding procedural requirements to be followed by the certifier and the owner of the applicant firm claiming group membership in the event that the certifier questions the owner's claim of group membership.

We also propose folding the requirements of § 26.63 into § 26.67 for clarification and simplicity. Under § 26.67(a)(1), an individual claims the presumption of social disadvantage by filing a signed, notarized Affidavit of Certification. We propose changing the name of this document to Declaration of Eligibility (DOE). Like the Affidavit of Certification, the DOE is found in the Uniform Certification Application (UCA).

In the current rule, the definition of social disadvantage is immediately followed by the definition of economic disadvantage; both definitions precede the provisions regarding rebuttal of each type of disadvantage. We propose that the social disadvantage rebuttal provisions immediately follow the definition of social disadvantage, and likewise for economic disadvantage (*i.e.,* definition immediately followed by rebuttal provisions. It is our view that this reordering will increase efficiency for certifiers and applicants when trying to find the rules for each type of disadvantage.

To claim a presumption of social disadvantage, an owner must only check the box(es) on the DOE for which group(s) the individual is a member, and sign and submit the DOE with the firm's UCA. To claim the presumption of economic disadvantage, the owner must sign and submit the DOE as well as a PNW statement.

We propose adding a reminder in § 26.67 that the signed DOE is the *only* evidence of group membership an individual must provide with the UCA. We want to add this reminder because we have seen instances in which certifiers burden applicants to provide additional evidence of group membership as a matter of course without a well-founded reason to question the individual's claim of membership. This NPRM would clarify that certifiers must not request

additional evidence as a matter of course. Additional evidence may only be requested if the certifier has a well-founded reason to question the individual's claim of group membership. When group membership is in question, § 26.61(b) states that the firm seeking certification bears the burden of demonstrating, by a preponderance of the evidence, that it meets the regulation's group membership requirements.

In the proposed rule, we are placing timelines/deadlines in § 26.67 to ensure that the process of questioning group membership is not unduly delayed by certifiers or applicants. For example, if a certifier properly asks an owner for additional evidence of group membership, the owner would be required to submit the evidence within 15 days of the certifier's written explanation. If the owner timely submits the evidence requested, the certifier would be required to notify the owner in writing, no later than 30 days after receiving the evidence, of the certifier's determination of group membership.

We emphasize that the presumption of social disadvantage remains rebuttable. If a certifier has a reasonable basis to believe that, despite membership in one of the groups whose members are presumed socially disadvantaged, the individual is not, in fact, socially disadvantaged, the certifier may commence a proceeding to determine whether the presumption of social disadvantage should be regarded as rebutted. When social disadvantage is questioned, § 26.67(b)(3) states that the certifier bears the burden of proof. We point out that current § 26.67(b)(2) states that a certifier *may* (not must), at any time start a proceeding under § 26.87 to determine whether an individual's presumption of social disadvantage should be rebutted. We believe that if a certifier has a well-founded basis to question an individual's social disadvantage, it *must* initiate a proceeding under § 26.87, and we have adjusted this language accordingly. We propose allowing the owner of a firm that is denied certification to submit a claim of individual disadvantage at any time, without regard to the waiting period in § 26.86(c). A certifier would not be able to require the individual to file a new application; the individual would be permitted to simply amend the original application.

Evidence and Rebuttal of Economic Disadvantage

Under the current rule, an owner claiming a presumption of economic disadvantage must, in addition to submitting a signed DOE, demonstrate that the owner's PNW does not exceed the DBE Program's current $1.32 million limit. The owner must also submit a signed statement of PNW, with appropriate supporting documentation, using the Department's PNW Statement without change or revision.

As explained in current guidance, the DBE Program ''should not include people who can reasonably be regarded as having accumulated wealth too substantial to need the program's assistance.'' [26] For example, there are instances in which an individual's PNW is below the program's cap, yet the individual is not, in fact, economically disadvantaged. Thus, if a certifier has an articulable reason, on a case-by-case basis (and not as a matter of course) to believe that an individual whose PNW does not exceed the cap should not be regarded as economically disadvantaged, the certifier is permitted under § 26.67(b)(1)(ii)(A) to evaluate whether the individual has the ability to accumulate substantial wealth (AASW). Under the current rule, the individual's presumption of economic disadvantage will be rebutted if the certifier finds that the individual does have the AASW. In making its determination under the current rule, a certifier may consider factors such as, but not limited to: (1) whether the average adjusted gross income of the owner over the most recent three year period exceeds $350,000; (2) whether the income was unusual and not likely to occur in the future; (3) whether the earnings were offset by losses; (4) whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm; (5) other evidence that income is not indicative of lack of economic disadvantage; and (6) whether the total fair market value of the owner's assets exceed $6 million.

During the last eight years, the Department has seen, on multiple occasions, that certifiers and applicant firms misinterpret the AASW rule. For example, they often treat the six factors as a checklist and unduly focus on the owner's adjusted gross income while ignoring the other five factors, rather than doing a holistic evaluation. In addition, calculating whether an owner's assets exceed $6 million has resulted in overly complex calculation disputes, while again largely ignoring any other factors that could have indicated an AASW. Thus, the Department proposes eliminating the six factors in favor of a more ''big picture'' approach. Specifically, the provision would instruct certifiers to evaluate whether a reasonable person would consider the owner economically disadvantaged. Indicators could include (but are not limited to) ready access to wealth, lavish lifestyle, income or assets of a type or magnitude inconsistent with economic disadvantage, or other circumstances that economically disadvantaged people typically do not enjoy. We emphasize that inquiry would have no effect on the PNW asset exclusions or limitations on inclusions. It would entirely disregard liabilities. We welcome comment on whether this proposed replacement swings the pendulum too far in the opposite direction of the current AASW provision. In other words, are the proposed elements too vague in nature and result in just as much confusion and dispute as the current provision? Would the proposal lead to inconsistent application of the regulation? If so, what factors should be considered in making an AASW evaluation?

Individualized Determinations of SED Status

Because the DBE Program is intended to be as inclusive as possible—without compromising the program's integrity and while remaining narrowly tailored—firms whose owners are not presumed socially and economically disadvantaged can still apply for certification. The DBE Program regulation has allowed for this since the program began in 1983. Appendix E of the regulation provides guidance for evaluating disadvantage on an individualized basis under § 26.67(d) (§ 26.67(e) in the proposed rule). The Department regularly receives feedback from certifiers, applicants, and other stakeholders about the excessive burdens related to gathering and submitting evidence under appendix E, particularly the evidence of economic disadvantage. Though not the Department's intention, much of the required evidence of economic disadvantage can be more challenging to obtain than necessary. The list of required evidence also focuses largely on the stature of other firms rather than on the applicant firm. Multiple stakeholders have told us that the standards set forth in appendix E are nearly impossible to meet. The standard is ''preponderance of the evidence,'' but

[26] See ''Official Questions and Answers (Q&A's) Disadvantaged Business Enterprise Program Regulation (49 CFR Part 26)'' available at *https://www.transportation.gov/sites/dot.gov/files/docs/mission/civil-rights/disadvantaged-business-enterprise/55851/official-questions-and-answers-disadvantaged-business-enterprise-program-regulation-49-cfr-26-4-25.pdf* and ''Official FAQs on DBE Program Regulations (49 CFR 23)—Section 23.31; 27.67(b)(2)—Personal Net Worth'' available at *https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/official-faqs-dbe-program-49-cfr-23.*

in practice is ''clear and convincing.'' The latter is a much more stringent burden to bear. Thus, we propose replacing appendix E with flexible, less prescriptive rules that will better allow certifiers to make accurate case-by-case determinations using the correct ''preponderance of the evidence'' standard. Further, we want to reduce the cost and hours burden for applicants to submit evidence of their individual disadvantage.

15. Ownership (§ 26.69)

The Department proposes considerable revisions to § 26.69, which has remained largely unchanged since 1999. The changes are essential because disadvantaged ownership is the foundation of the DBE Program.

Burden Reduction, Simplification, and Consistency

The revisions would preserve the section's programmatic objectives and effect but articulate the operative concepts differently. We believe that the revisions would serve several related goals: burden reduction, simplification, improved understanding and thus compliance, streamlined administration, consistent results, and enhanced program integrity. We also think that revised § 26.69 can drive efficiency gains across the board. The proposed changes would further these goals by stating rules and intent plainly and directly. They would more logically organize the material. Our proposed changes would replace language that has proved confusing, impractical, awkward, or outdated, with text that we believe corrects or mitigates these shortcomings. Clear rules and consistent results are what stakeholders tell us they value above all. Accordingly, we propose several bright-line rules that we believe will make certification easier to obtain, maintain, and monitor. The overarching objective of subpart D, after all, is to certify eligible firms.

The Department's proposed revisions would describe and prescribe. It is more flexible than the language it replaces. At the same time, the revised rules would provide detail when detail can resolve longstanding misinterpretations. The intent is to confront interpretive challenges directly and unambiguously. A measure of certainty should provide all stakeholders peace of mind. The proposed revision would also make the certification process quicker and less intrusive. To the extent possible, we prefer to leave business decisions to business owners and give certifiers similar latitude to determine how the rules apply to individual applicants and DBEs. They are in the best position to make these judgments. Broad anti-abuse rules, rather than long lists of suspect transactions, safeguard the integrity of the ownership requirements. We consider the revision to be notably more user-friendly than the present § 26.69.

The Department has come to believe that current § 26.69(a) is too complex. It is more a chronology or summary of ownership-related events than a statement of the core requirement for eligibility. It is also out of sync with current business realities. The revised rule reworks and simplifies the essential concepts and moves them to places in § 26.69 that correspond to their role in explaining the general rule. There, we develop and update those concepts and cross-refer to related provisions.

The current § 26.69(b), streamlined and restated as the general rule, would become the new § 26.69(a). The restatement would overtly tie the rules that follow to the general rule that SEDOs must own at least 51 percent of the business. It would explain concisely and precisely the import of the provision and what the firm must prove to be eligible for certification.

Reasonable Economic Sense

The proposed new § 26.69(b) replaces the concepts of ''real, substantial, and continuing'' (RS&C) capital contributions and ownership, and the binary alternative of ''pro forma'' ownership, with the broader, more flexible requirement that transactions affecting ownership make reasonable economic sense (RES). The revision would accomplish several objectives, not least of which are objectivity and neutrality. The revision would recast the requirement in terms less awkward and more descriptive. The revision would also address the rigidity of the RS&C, avoiding outcomes (*e.g.,* ineligibility determinations based on a one-dollar deficiency in contributed capital) that can seem capricious.

We propose retiring RS&C in favor of a more workable standard, one that can adapt to unforeseen transactions and business structures. RES is less absolute. It acknowledges that substance trumps form and one size never really fits all. Our objective is to encourage certifiers not just to ''consider'' all pertinent facts but to *weigh* them in firm-specific context. The current language obscures the fact that certifiers have always had the freedom and discretion to make these judgments. We believe that the proposed revision would make certifiers more confident and business owners less wary. Paragraph (b) of the revised § 26.69 describes the proposed standard's components and signals that reasonable proportionality, economic effect, and common sense are the new touchstones. We intend, in the ''benefits and burdens'' clauses, to give certifiers a more useful yardstick for assessing initial and continuing eligibility.

The proposed revisions to § 26.69(c) would define the new term ''investments'' to include purchase of ownership interests, capital contributions, and certain gifts, *and* additional investments after acquiring the ownership. This would be consistent with the current RS&C standard but more straightforward and less strained. Stakeholders frequently do not understand what the current language means. A purchase, for example, is not a capital contribution, and investments ''to acquire'' ownership are not the only ones to which the rules apply. The single-sentence numbered provisions under new paragraph (c) attempt to remedy these deficiencies in the current rule, which too often confuse SEDOs who are not versed in certification nuances.

The paragraphs under § 26.69(c) would also streamline the rule and make it more equitable. The proposed § 26.69(c)(3) would treat all joint owners the same, regardless of marital status or state-specific community property law. We intend for the same rules to apply to all SEDOs and to all cases of joint ownership regardless of jurisdiction. Hence the simple statement that ownership tracks title. Paragraph (c)(4) clarifies which gifts count as investments, simplifies the analysis, and minimizes opportunities for gamesmanship.

These proposed changes would permit us to eliminate the marital property rule in current § 26.69(i) and extend the renunciation and transfer remedy to all joint owners. We would remove as unnecessary the complex machinery of current § 26.69(h), which applies when a non-disadvantaged individual gifts or transfers interest or other assets without adequate consideration. The presumption and two-pronged rebuttal/higher standard of proof is overly complex. The streamlined, modernized proposed rule would work in better coordination with the rest of part 26 and would enable us to simplify or eliminate corresponding rules in other sections, *e.g.,* in §§ 26.67 and 26.71. Revised § 26.69(c), in short, should minimize haggling, save resources, and improve program administration. We expect it to produce speedier, more accurate results that do not vary by state.

The proposed § 26.69(d) explains how the rules for purchases differ from those for capital contributions, and they provide simple but significant

backstops. These rules tie into concepts introduced in preceding paragraphs and replace rules that have proved nearly impossible to administer effectively. The revised rule explains the concepts more objectively and more directly than do current § 26.69(c) through (f).

The proposed revisions to § 26.69(e) would provide new, bright-line rules for debt-financed capital contributions and purchases. They would replace disjointed and often misunderstood provisions. The proposed would substitute an RES analysis for RS&C and go a step further toward clarity and preventing abuse. They give effect to longstanding Departmental and Congressional intent and, we believe, substantially reduce certifier burden. We intend for them to significantly reduce administrative bottlenecks. They should preempt at least some frivolous or premature applications and give certifiers a clear reason for rejecting the ones that get through.

Paragraph (f) revisions bring Department policy into the regulation. We want to make clear that legitimate efforts to correct impediments to certification are not evasive or subversive. The ultimate objective remains certifying eligible small, disadvantaged businesses with as little hindrance as possible.

The three, short anti-abuse rules in proposed paragraph (g) would put firms on notice of particular, and logical, results of the RES requirement and would give certifiers explicit authority to streamline the analysis.

We believe that all of the proposed revisions would save firms and certifiers time and significantly improve program administration. We expect to see results that are more accurate and more equitable.

16. Control (§ 26.71)

Control of DBEs has been part of the certification eligibility criteria since the program began in 1983. Certifiers are required to analyze the extent to which disadvantaged individuals control their business in both substance and form. However, the Department believes that strict requirements about non-disadvantaged participants hinder the certifier from conducting a meaningful analysis of whether the disadvantaged owner controls the firm. As such, we are proposing significant revisions to the control provisions found in § 26.71. The rationale of our revisions is to give certifiers flexibility when determining whether the SEDO controls the firm. Thus, we recommend replacing the current checklist-type requirements with less prescriptive rules. The proposed revisions would also give applicants more flexibility in demonstrating control.

The proposed revisions would shift the focus from the actions and experience of non-disadvantaged participants in the firm to those of the SEDO. The proper and originally intended inquiry is whether the SEDO controls the firm through managerial oversight, revocable delegation of authority, and critical and independent decision-making. The proposal would also streamline § 26.71 by removing redundancy, and in some instances, excessively burdensome requirements.

The Department proposes to add general rules to § 26.71(a). Proposed § 26.71(a)(1) would state that disadvantaged owners who own at least 51 percent of the firm must also control it. Proposed § 26.71(a)(2) would add a fine point that the certifier must consider all relevant facts together in context.

Because control requires the certifier to make a fact-intensive determination, proposed rule § 26.71(a)(3) would state that a firm must have operations in the type of business that it seeks to perform as a DBE before it applies for certification. We believe there are two benefits to this proposal. First, the proposed rule would allow the certifier to evaluate the disadvantaged owner's control of the firm based on demonstrable actions that the owner takes to run the business. Second, the proposed rule would help certifiers better allocate their resources by relieving them from the burden of evaluating applications from firms that are not conducting business and have no ability to bid on DBE contracts. The proposed rule would exclude firms that are applying for ACDBE certification, since many potential ACDBEs have no operations before obtaining a contract.

SEDO as the Ultimate Decision Maker

The Department proposes § 26.71(b) to clarify that a disadvantaged owner must be the ultimate decision maker. The rule reminds certifiers and firms that the control inquiry requires an analysis that goes beyond formalities shown in business structure, governing documents, and policies. What the firm must prove under this provision is that the SEDO ''runs the show'' by having the final say on all matters. This means that the firm's chain of command must be led by the disadvantaged owner, whether in a small startup business or a large multifaceted corporation. Except under narrow circumstances described in § 26.71(c)(4), other participants at the firm must faithfully carry out every decision that the SEDO makes.

Governance

Proposed rule § 26.71(c) combines the requirements of the current § 26.71(c) and (d) rules and clarifies what a firm must prove to demonstrate control of the firm's governance.

The proposal simplifies current § 26.71(c) into one general rule that precludes provisions that require non-SEDO concurrence or consent for the SEDO to act. The proposed rule would simplify the introductory language of current § 26.71(d), denoting that the disadvantaged owners must ''possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.'' This phrase comes from an earlier rule that the Department intended to remove after it issued the more specific provisions of § 26.71(e), (f), and (g). The phrase has caused certifiers to misinterpret this broad, introductory language as the rule itself, independent of the precise paragraphs (d)(1) through (3).[27] We have previously opined that the introductory language is merely prefatory and does not constitute an eligibility requirement independent of paragraphs (d)(1) through (3).[28]

The Department intends the proposed rule to reflect what is described in the current § 26.71(d)(1) through (3)—that the disadvantaged owner must control the firm by holding the highest officer position and having voting authority over other directors, partners, or members. We believe the proposal would resolve confusion and clarify that the rule is about the disadvantaged owner's governance of the firm.

We also propose to clarify the requirement that ''disadvantaged owners must control the board of directors.'' Our proposal outlines voting and quorum provisions that would prevent a disadvantaged owner from controlling the board of directors. The proposal also clarifies that disadvantaged individual(s) must have *present* control of the board of directors, meaning they cannot prove eligibility under § 26.71(c) based on a disadvantaged owner's power as a

[27] See, *e.g.,* 17–0058 ARS Electric, LLC (Oct. 10, 2017) at 2 (omitting any eligibility analysis under paragraphs (d)(1) through (3)). *https://www.transportation.gov/sites/dot/files/data/dbe/appeal-docs/17-0058%20ARS%20Electric%20FINAL-REDACTED.pdf.*

[28] See, *e.g.,* 13–0073 C2PM, Inc. (Nov. 7, 2013) (certifier disregarded SEDO's holding of highest officer position and demonstrated control of board of directors; decision reversed) and 16–0017 Tamarac Land Surveying, LLC (Apr. 28, 2016) (certifier cited introductory language of § 26.71(d) to support denial but did not dispute SEDO's ability to control board of directors; decision reversed).

majority shareholder to later change the composition of the board of directors. See § 26.73(b) (certifier must evaluate eligibility based on present circumstances). The Department affirms many certification denials each year because of disqualifying voting and quorum provisions in the firm's bylaws. We believe that adding more explicit language to the rule would encourage firms to amend bylaw provisions that do not conform with the rule before applying for DBE certification.

The only exception proposed under § 26.71(c) is for extraordinary actions detailed within proposed § 26.71(c)(4). The Department believes that non-SEDOs should have the power to block extraordinary measures that would affect their ownership rights. We believe that protecting minority ownerships through governing provisions is generally permissible and consistent with standard business practices.

Expertise

The Department proposes revisions to § 26.71(d), to incorporate a portion of the current § 26.71(g) with minor adjustments. The proposed rule would clarify that the SEDO must have an overall understanding of the firm's business operations to the extent necessary to make managerial decisions. Administrative decisions made by the disadvantaged owner do not prove control unless the firm primarily performs administrative business services for its customers.

The owner of a DBE does not need to be an expert in every aspect of the firm's operations, as we explained in the 1997 supplemental notice of proposed rulemaking (SNPRM): ''with respect to expertise, the disadvantaged owners must, in our view, generally understand and be competent with respect to the substance of the firm's business.'' (62 FR 29548, 29568 (May 30, 1997))

The understanding that the owner should have varies by the nature and complexity of the firm's operations. For example, a disadvantaged owner of a large electrical firm may not be an electrician but would need to know enough about the firm's electrical work and processes to make managerial decisions. In contrast, an owner of a three-employee firm that provides lawn services may only need general managerial expertise to control the firm.

SEDO Decisions

Proposed rule § 26.71(e) incorporates a portion of the current § 26.71(g) with minor amendments. Based on several appeal decisions, the Department believes that this rule is too subjective, since it requires that the owner must have ''the ability to'' make decisions. To correct this issue, the proposed rule would direct the inquiry to whether the SEDO makes major decisions that affect the firm's prospects. The proposed rule would have three requirements. First, the firm would be required to show that the SEDO receives pertinent information from subordinates to demonstrate that other participants are not making important decisions without the owner's knowledge. Second, the firm the firm would be required to show that the SEDO critically analyzes the pertinent information, based on the SEDO's knowledge demonstrated in § 26.71(d). Failure to prove this means that the owner simply ''rubber-stamps'' what another participant has to say about an issue. The proposed rule, however, would not preclude the owner from asking questions and consulting other participants as the owner analyzes the information. Finally, the SEDO would need to make independent decisions after receiving and analyzing the pertinent information.

Delegation

The Department proposes to simplify and restructure the current delegation rule. As we stated in the 1997 SNPRM, ''[t]he more successful or complex a firm becomes; the more inevitable delegation becomes. It is fanciful to imagine that one or a few owners can or should do, or be prepared to do, everything that a firm does. As long as the owners can take back authority they have delegated, retain hiring and firing authority, and continue to 'run the show' for the company, they control it, notwithstanding delegation of some authority and functions.'' (62 FR 29548, 29568 (May 2, 1997))

The proposal makes clear that the disadvantaged owner must have the power to revoke the delegated authority, but also emphasizes that the firm must show that an obvious chain-of-command exists within the company, which is recognized by all employees and associates of the business.

Finally, the proposed paragraphs describe what delegated actions by non-disadvantaged individuals are permissible under § 26.71.

Independent Business

The Department proposes to make minor amendments to current § 26.71(b) and redesignate the provision as § 26.71(g). The proposed rule would clarify that a firm must prove that it is independently viable, notwithstanding a relationship with another firm from which it receives or shares essential resources. A pattern of regular dealings with a single or small number of firms does not necessarily make a firm ineligible for certification so long as it is not acting as a ''front'' or ''pass-through'' for another firm or individual. For example, the fact that a trucking firm in a rural part of a state provides services to the only prime contractor in town does not necessarily make the firm ineligible under the proposed rule, unless the certifier determines that the applicant firm is set up as a conduit for another firm or person who is not eligible to participate in the DBE Program. The proposal also clarifies that relationships and transactions between firms of which the SEDO has 51 percent ownership and control does not violate the rule, although the relationship may raise a business size/affiliation issue.

Franchises

The Department proposes redesignating the current provision § 26.71(o), which is commonly referred to as the franchise rule, to § 26.71(h).

NAICS Codes

The Department proposes redesignating the current provision § 26.71(n), which is commonly referred to as NAICS rule, to § 26.73 with minor technical corrections.

Removed Provisions (§ 26.71 (i), (j), (k), (l), (m), (p), and (q))

The current language of § 26.71(i), (j), (k), (l), (m), (p), and (q) relates to the concept that non-disadvantaged individuals can participate in any DBE firm, as long as disadvantaged individuals control the firm. The Department's proposed rules offer more than adequate means to decide whether an owner controls his or her firm, with or without the involvement of non-disadvantaged participants. The proposal would eliminate redundancy but also remove the tendency of certifiers to rely in accurately on these provision as catch-all grounds for ineligibility whenever a non-disadvantaged participant is involved or present in the firm's operations. The Department has stressed for decades that this is inappropriate, and that the proper inquiry is whether the disadvantaged owner controls the firm notwithstanding the participation of other employees, family members, or non-disadvantaged owners.

For example, the Department proposes to remove § 26.71(k), commonly known as the ''family business'' provision, to eliminate an eligibility criterion that is often misused by certifiers. Family-owned firms have long been a concern in the program. The December 1992 NPRM proposed that certifiers treat non-disadvantaged family

members the same as other non-disadvantaged participants in DBEs. The participation of family members in a firm should not be viewed as meaning that a disadvantaged individual fails to control a firm, as stated in the December 1992 NPRM. The May 1997 SNPRM provided explicitly that if the threads of control in a family-run business cannot be disentangled, such that the certifier can specifically find that a woman or other disadvantaged individual independently controls the business, the certifier may not certify the firm. The 1999 final rule maintained this line of thinking—a business that is controlled by the family as a group, as distinct from controlled individually by disadvantaged individuals, is ineligible.

The current language of § 26.71(k) stresses that non-disadvantaged individuals can participate in any DBE firm, as long as disadvantaged individuals control the firm. This is duplicative of revisions proposed in this NPRM. The Department believes that the proposed provisions offer more than adequate means to determine whether a SEDO controls his or her firm, with or without the involvement of non-disadvantaged or disadvantaged individuals and relatives.

The Department recommends removing current § 26.71(h), commonly referred to as the ''license rule,'' to eliminate redundancy with proposed rules § 26.71(d) and (e) and to eliminate state law requirements from the rule as we propose in revisions to the personal net worth and ownership provisions.

The current § 26.71(h) directs the certifier to deny certification if the SEDO does not hold a license or credentials that a state or local law requires to own and control the firm. The Department believes that the UCP is the proper authority on state or local license requirements since it is more familiar with the law within its state, and Departmental personnel are not experts in state and local law. For example, appeal cases often provide two opposing interpretations of a state or local law, with no citation to the law at issue, and fail to explain how the law does, or does not, apply to the SEDO. The Department remands in these circumstances for the certifier to decide and interpret which license state or local law requires the SEDO to hold under the rule.

More often however, a state or local law(s) only require that someone employed at the firm hold a license to perform specific work. In the preamble to the 1999 final rule, the Department explained that when ''State law allows someone to run a certain type of business (*e.g.,* electrical contractors, engineers) without personally having a license in that occupation, then we do not think it is appropriate for the certifier to refuse to consider that someone without a license may be able to control the business.'' (64 FR 5096, 5119–20 (Feb. 2, 1999)) The current language of § 26.71(h) adopts the view that the Department expressed in the preamble and allows the certifier to consider the SEDO's lack of a license as ''one factor'' in determining control.

The Department reversed many appeal decisions where the ''one factor'' rule is either misapplied or not considered in context with the firm's overall operations. For example, the rule does not disqualify trucking firms if the SEDO does not have a commercial driver's license.[29] The Department believes proposed rules § 26.71(d) and (e) better describe the proper control inquiry than the current ''one factor'' rule, making § 26.71(h) therefore redundant. The pertinent questions, which exist regardless of licensing, are whether the SEDO has enough of an overall understanding of the business to run the firm and whether the SEDO makes independent decisions.[30]

Subpart E—Certification Procedures

17. Technical Corrections to UCP Requirements (§ 26.81)

The Department would like to make minor technical changes to sections (a) and (g), removing language that is outdated and no longer applicable.

18. Virtual On-Site Visits (§ 26.83(c)(1) and (h)(1))

Ensuring that only eligible firms participate in the DBE Program is central to the integrity of the program and critical to recipient compliance activities. The Department believes that regularly updated on-site reviews are an extremely important tool in helping prevent fraudulent firms or firms that no longer meet eligibility requirements from participating in the DBE Program. See 76 FR 5083, 5090 (Jan. 28, 2011). We acknowledged in the 2011 final rule that on-site visits can be time and resource-intensive, but the Department encouraged recipients to conduct updated on-site visits of certified firms on a regular and reasonably frequent basis. The current rule instructs certifiers to perform an on-site visit at the firm's principal place of business to interview firm officers and evaluate their work histories and/or résumés. The rule also requires certifiers to visit job sites the firm is working on at the time of its eligibility review.

The Department proposes amending § 26.83(c)(1) to make permanent the virtual on-site visit flexibilities announced in guidance in response to the COVID–19 pandemic.[31] This would free up certifier resources to enable them to better administer other aspects of the DBE and ACDBE Programs, *e.g.,* on-site monitoring of contractor compliance. Following the announcement of the Department's flexibilities, we have received feedback from certifiers stating that virtual on-site visits have reduced logistical burdens, time, and expense on certifiers and firms while ensuring the safety of all parties involved in the on-site process.

Even before the COVID–19 pandemic flexibilities were put in place, the Department's past guidance and policy gave certifiers the discretion to conduct virtual on-site interviews. For example, the Department explained in a 2005 Q&A, issued before the current interstate rule, that ''the UCP has discretion to require the applicant to appear in person for an interview. Before imposing such a requirement, the UCP should determine if other, less onerous, means can be used to obtain the needed information (*e.g.,* sending documents, participating in a teleconference or videoconference).'' [32]

The Department believes that virtual on-site visits are less onerous and more efficient, for certifiers and firms alike, for certifiers to obtain information about a firm. It is our view that a virtual on-site visit is equally effective as an in-person visit. It gives the certifier the choice to setup and complete multiple interviews during the day since it eliminates travel time to the firm's principal place of business or job site. For example, one medium-sized certifier reported that conducting virtual on-site visits saved about $20,000 in travel costs and decreased the time it took to process applications by 10 percent. With the time and resources that a certifier would by not traveling to a

[29] See *e.g.*, 18–0003 Clear Creek of Salisbury, Inc. (May 29, 2018) (owner did not need own commercial driver's license (CDL) to control hauling firm); see also 18–0007 K-Kap, Inc. (May 15, 2018).

[30] See 13–0064 J&L Steel, Inc. (Aug. 23, 2013) (absence of electrician license did not impair owner's control of large electrical contracting business when she did not perform electrical work); 13–0112 Nancy's Tree Planting, Inc. (Jan. 10, 2014) (no home improvement contractor license needed to control commercial landscaping business).

[31] See COVID–19 Guidance (June 29, 2021) (extending virtual on-site flexibilities announced in March 2020) available at *https://www.transportation.gov/mission/civil-rights/covid-19-guidance.*

[32] 49 CFR part 26 Q&A, ''Is it appropriate for UCP's to require out-of-state applicants to appear in person for an interview?'' available at *https://www.transportation.gov/sites/dot.gov/files/2020-01/docr-20180425-001part26qa.pdf.*

firm's principal place of business, the certifier could better prepare for the interview itself, ultimately review more applications, and improve the quality of their on-site review report.

Also, when certifiers or UCPs become aware of a change in circumstances or concerns that a firm may be ineligible or engaging in misconduct (*e.g.,* from notifications of changes by the firm itself, complaints, information in the media, etc.), the certifier or UCP should review the firm's eligibility, including conducting an on-site review. Certifiers can meet this objective more efficiently with a virtual option.

The Department believes the proposal would give the firm a better opportunity to demonstrate eligibility because the SEDO would have more time to fully explain their industry and how the business runs, its relationships with other businesses, and describe how they control their business within the meaning of the rule. The owner can also make more employees available to support the owner's statements or answer questions certifier may have.

Many certifiers report that another benefit of virtual on-site visits is that most communication software allows the reviewer to record the interview, which is another flexibility that the Department proposes in this rulemaking. Recordings allow certifiers to prepare more precise on-site visit reports. The certifier and firm can use the recording as evidence during a decertification hearing, and the independent decisionmaker may find it useful to review the recording before ruling on the proposed decertification. The Department rarely receives recordings on appeal, but we believe that they may be useful when there is a dispute as to what the parties discussed during an on-site visit.

Virtual on-site visits also have safety and health benefits. Several certifiers used virtual on-site visits during COVID–19 surges to protect the health and safety of employees and firm employees. Certifiers also report that the choice of conducting a virtual on-site visit eases the concerns of employees about traveling to rural areas where there is no mobile phone service or traveling to the homes of business owners.

The Department believes that virtual on-site visits are an easier means for certifiers to conduct on-site reviews after it certifies a DBE that is in another state. As a matter of good auditing practice, certifiers can easily perform virtual on-sites visits of an out-of-state DBE on a regular and frequent basis per the UCP program requirements, or if the certifiers have a reason to question the firm's eligibility. See §§ 26.83(h)(2), 26.87(b).

Although there are many benefits of virtual on-sites, we recognize that some certifiers may prefer to conduct interviews of some firms in person. The proposed rule would retain certifier discretion to still conduct in-person on-site visits.

Finally, the proposal would not otherwise obviate requirements for conducting on-sites during an initial application. The certifier would still interview principal officers at the firm, review résumés with the SEDO, interview the firm's other participants, and visit an active jobsite (virtually or in-person).

19. Timely Processing of In-State Certification Applications (§ 26.83(k))

The Department proposes amending the current § 26.83(k) (redesignated to § 26.83(l) in the proposed rule) to reduce impediments to the certification process. Specifically, we seek to limit a certifier's ability to extend the 90-day timeframe in which a certifier must issue a final eligibility decision for in-state certification applications and to codify existing guidance that gives certifiers discretion to allow firms to fix errors within an application. Under the current rule, the certifier must notify a firm in writing within 30 days from receipt of the application whether the application is complete and ready for evaluation. The Department clarified in guidance that a ''complete'' application means that the firm filed a Uniform Certification Application (UCA) and the documents required from the UCA's checklist. See 49 CFR part 26 Q&A, Compliance with Requirements for Timely Processing of Certification Applications (Apr. 25, 2018, at 1–2 (discussing when the 90-day review period starts and steps UCPS should take to ensure the timely processing of DBE applications)).[33]

After the certifier receives all the information required under the rule, the certifier must make a certification decision within 90 days. Current § 26.83(k) states that a certifier may extend the 90-day period up to 60 days ''upon written notice to the firm, explaining fully and specifically the reasons for the extension.'' Our proposal would reduce the extension period from 60 days to 30 days. A certifier would need OA approval for any extension beyond 30 days. The 1997 NPRM explains our rationale for the current review periods, providing that the Department decided to propose extending the deadline to 90 days, with a possibility of a 60-day extension of this period if the recipient sends a specific written explanation to the applicant. The Department was persuaded that a 60-day deadline was unrealistic in light of the certification workloads facing many recipients. However, the Department determined that a deadline remained necessary to give firms the assurance of reasonably timely handling of their applications. With the approval of the concerned Operating Administration, the recipient could alter the deadline involved, but the appropriate DOT office would be very careful to grant only what relief is necessary to recipients. (62 FR 29548, 29573 (May 30, 1997))

The Department believes that the technological advances that exist today eliminate the need for a 60-day extension. Many certifiers now use software that reduce the time it takes to process an application, and the proposed allowance of virtual on-site visits should also give the certifier enough time to decide applications within the standard 90-day period.

We understand, however, that there are some situations where the certifier would need a brief extension. For example, a certifier may extend its review to give the firm time to cure a defect in its application. There may also be extraordinary or unusual instances where the certifier may need more time beyond the proposed 30-day extension period, at which point, the proposal requires that the certifier obtain OA approval for another extension. The Department seeks comment on whether another extension is necessary.

Finally, we remind certifiers that a failure to make an application decision within the § 26.83(l) period is a constructive denial of the firm's application, and that certifier may become subject to penalties for noncompliance under §§ 26.103 and 26.105.

20. Curative Measures

We propose to codify our 2019 memorandum regarding curative measures during the DBE and ACDBE certification application process to streamline and reduce redundancy in the certification process.[34] As we explained, the certification process can

[33] See ''Compliance with Requirements for Timely Processing of Certification Applications'' available at *https://www.transportation/gov/sites/dot.gov/files/docs/mission/civil-rights/disadvantaged-business-enterprise/308776/dbe-guidance-timely-processing-dbe-certification-applications.pdf.*

[34] See ''Curative Measures During DBE/ACDBE Certification Application Process'' available at *https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/curative-measures-during-dbeacdbe-certification.*

be a lengthy and intensive undertaking for certifiers and applicant firms. If a certifier finds a firm ineligible, the certifier must expend often limited resources to issue a regulation compliant denial letter. If the denied firm reapplies, the certifier must reprocess a very similar application to what was previously submitted, including conducting another on-site review. That is why our 2019 memorandum reminds applicant firms and certifiers that firms may proactively revise their UCA and/or supporting documents to conform with the regulation's certification requirements before a certifier makes a final eligibility decision. Similarly, a certifier may notify the applicant about any eligibility concerns before making a final decision. We see tremendous benefits to this practice. The Department continues to stress that allowing an applicant to take curative measures is not meant to allow unqualified firms into the program. It would simply give the firm a chance to resolve certification issues during the eligibility evaluation. A firm contacting a certifier to request permission to cure deficiencies is generally not an attempt to circumvent program requirements.

Proposed rule § 26.83(m) would incorporate what is stated in the 2019 memorandum. A certifier would be required to allow a firm to make any change(s) as long as the changes are made within the § 26.83(l) review period. In addition to essentially mirroring the 2019 memorandum, our proposed change is consistent with policies we discussed in previous preambles. In 1992, the Department proposed an amendment that would allow a firm to correct errors within 30 days of receiving a denial letter to avoid reapplying for certification. In the 1997 SPRM, the Department recognized certifiers' concerns that allowing firms to fix errors and reapply soon after a denial wastes resources. The 1997 NPRM, however, encouraged certifiers to allow applicants to correct minor paperwork errors, non-material mistakes, and omissions in applications before denying an application. (62 FR 29548, 29573 (May 30, 1997)) The 1999 preamble to the final rule reiterated that certifiers may allow firms to correct minor errors without invoking the usual 12-month waiting period, and the Department urged certifiers to follow such a policy. (64 FR 5096, 5123 (Feb. 2, 1999))

21. Interstate Certification (§ 26.85)

The Department proposes changes to the current § 26.85, the interstate certification rule, which would streamline the interstate certification process while preserving the integrity of the DBE Program. First, the proposal would implement reciprocity between Unified Certification Programs (UCP)—achieving a goal that we described in the 2010 NPRM as the ''holy grail of certification.'' (75 FR 25815, 25818 (May 10, 2010)) Second, after a UCP certifies a DBE that applies for interstate certification, the Department is proposing procedures that would facilitate information sharing amongst UCPs and would establish efficient processes to remove ineligible firms from the program.

We believe the proposal would provide faster and more efficient means to achieve the ''fundamental objectives'' of interstate certification, which are: (1) facilitating the ability of DBEs to compete for DOT-assisted contracting; (2) reducing administrative burdens and costs on the small businesses that seek to pursue contracting opportunities in other states; and (3) fostering greater consistency and uniformity in the application of certification requirements while maintaining program integrity.[35]

Issues With the Current Rule

The Department compiled appeal information for the purpose of this NPRM. We observed that from fiscal years 2011 to 2020, 77 percent of the appeals that involved an interstate certification denial are reversed or remanded, less than 22 percent of cases are affirmed, and 1 percent are dismissed.

Among the cases that are reversed, a plurality (35 percent) are reversed because the UCP required the firm to provide more information than § 26.85(c) requires, and 26 percent of cases are overturned because the certifier denied certification without referencing a good cause reason. The same percentage of cases are reversed because the UCP did not give the DBE an opportunity to respond to the UCP's objection to the DBE's home state certification as the rule requires. Our reversals show a common trend: UCPs generally give little deference to the DBE's existing certification. However, the UCP often chooses to verify, question, and reevaluate all aspects of the DBEs certification, which the interstate rule prohibits.

Relatively few interstate certification denial cases are affirmed on appeal, and even fewer are affirmed because the home state certification is erroneous. Approximately 54 percent of affirmations occur because the DBE did not provide its entire home state (State A) package as § 26.85(c) requires. In these cases, it is not uncommon that the DBE cannot locate material or mistakenly omits a document. Few appeals decisions are affirmed because State A's certification was erroneous. Cases are primarily affirmed because of defects in the certification file that the DBE could have easily corrected (*e.g.,* a disqualifying bylaw provisions). There has not been a case where the Department affirmed based on an allegation that State A's certification was obtained by fraud.

The Department has observed over the 10 years since we promulgated § 26.85 that the rule has not operated in a way that achieves the rule's objectives. The high reversal rate of interstate certification denials shows that the rule must be revised to reduce unnecessary burden on firms, certifiers, and the Department. We believe national reciprocity would build trust, encourage teamwork, and improve the quality of certifications as contemplated when the Department introduced the UCP system in 1999.

Proposed § 26.85(a) would revise the interstate rule to apply to all DBEs, replacing the restrictive text of the current rule which applies only to DBEs with a home state certification. The Department believes that excluding a subset of DBEs would contradict the rule's objective to *facilitate* certification.

Paragraph (b) would clearly state that a UCP (State B) must accept certifications from a firm that has already been certified as a DBE—directly implementing interstate reciprocity. The proposal would repeal ''option 2'' under the current rule. The proposal for paragraph (c) would provide a simple and streamlined interstate application process for DBEs. The DBE would apply to State B by submitting a short cover letter, an electronic image, or a photocopy of a UCP directory showing the DBE's certification, and a signed Declaration of Eligibility (DOE) (the same declaration described in proposed §§ 26.67 and 26.83).

The cover letter would inform State B that the DBE is applying for interstate certification and identify the states where the DBE is certified. Since DBEs often do not have a certification notice readily available, the proposal only requires the DBE to provide proof that its name appears on a UCP directory. This would remove the unnecessary burden for a DBE to have to contact a certifier for a copy of its certification notice. Finally, we emphasize that the Declaration of Eligibility represents

[35] See ''Interstate Certification 49 CFR § 26.85 Guidance'' available at *https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/interstate-certification-49-cfr-2685.*

conclusive evidence that the DBE is eligible when it submits its interstate certification application. The DOE ameliorates the burden of providing an entire certification package, which State B may require under the current rule; this is the most common issue presented on appeal. Of course, State B may later obtain certification information from other UCPs to carry out its compliance activities under proposed paragraphs (g) and (h) after it certifies the DBE.

After receiving the material from paragraph (c), State B would have 10 business days under proposed paragraphs (d) and (e) to verify that the firm is already certified as a DBE and to approve the DBE's interstate certification application. State B would only contact State A for confirmation in rare cases where the name of the DBE does not appear in State A's UCP directory.

Since interstate certification is an expedited procedure, proposed paragraph (f) warns the certifier that any undue delay by State B in certifying the DBE would be noncompliance with this part.

Overall, proposed paragraphs (a) through (f) would streamline a process that could take more than 140 days under the existing rule and reduce the review period to 10 business days or less. The interstate application would consist of the three documents described above.

Post-Interstate Certification Procedures

After certifying the DBE, as with the current rule, State B would treat the DBE as any other DBE within its UCP.

Proposed paragraph (g)(1) describes a discretionary process for any UCP to obtain all or a portion of a DBE's unredacted certification files. The UCP that initially certified the firm would likely have the bulk of the DBE's information, but other UCPs could have additional information that may be helpful to monitor the DBE. The Department seeks comment on whether there should be limits to the information a UCP may request from another state. Should the rule only allow the UCP to request certification information from the previous seven years? Or should a UCP be entitled to only a subset of information in the certification file (*e.g.,* most recent on-site report and the latest Declaration of Eligibility)?

Paragraph (g)(2) would require all UCPs to share certification file information within 10 business days of a request. We believe the proposal would create a minimal burden, as technological advances now allow a certifier to send electronic certification files. The Department stresses that the integrity of the program is the responsibility of all participants, regardless of where the DBE is located. UCPs are required to promptly share information with other states. The proposal simply reinforces the UCP's duty to cooperate, as described in §§ 26.81(d) and 26.109(c).

As in the current rule, a UCP would be required to carry out its own oversight of its out-of-state DBEs. The proposed paragraph (g)(3) clarifies that the UCP must conduct its own certification reviews and investigate complaints regarding out-of-state DBEs, as it would do with in-state DBEs. We believe that the proposal to allow virtual on-site visits makes this process less burdensome.

Paragraph (g)(3) would also clarify that the DBE must submit an annual DOE, with documentation of gross receipts to confirm small business size, to the UCP of each state in which it is certified. The Department seeks comment on whether a centralized portal should be created to reduce the burden on DBEs that must file declarations in multiple states. The DBEs could upload current annual and material change declarations to the system at a specific time during the year where all UCPs could review the information. The Department seeks other ideas on how a centralized portal, which would not be housed at USDOT, would function and what additional capabilities the portal should have.

To address concerns discussed in previous preambles that reciprocity would promote forum shopping by DBEs to apply to UCPs that may be perceived as less stringent in their certification reviews, proposed paragraphs (g)(4) and (6) would provide UCPs tools to remove ineligible firms from the DBE Program. The objective of paragraphs (g)(4) and (6) is to promote uniformity in certification and program integrity.

Proposed paragraph (g)(4) would allow a UCP to take part in a decertification proceeding conducted by another state, if the UCP believes the DBE is ineligible based on the same facts and reasons as the other state. The joint removal procedures would only be a possible if UCPs communicate with each other. We hope that the proposed rule will encourage UCPs to interact more frequently. If the UCP joining the proceeding has additional evidence to support ineligibility, both states could agree to update the notice of reasonable cause to propose decertification. While the UCP joining the proceeding would be permitted to provide additional information to support the initiating UCP's case, the UCP would not be permitted to change the grounds for the proposed removal or unduly delay the informal hearing. The joint decertification proceedings would be a discretionary process and only UCPs that choose to participate would be bound to the decision of the independent decisionmaker. The Department seeks comments about additional, or alternative procedures and due process protections the provision should include.

Proposed paragraph (g)(5) would provide that UCPs should regularly check and update the ineligibility database, which is the same requirement that exists under the current rule.

Finally, to strengthen program integrity, proposed paragraph (g)(6) states that if the Department determines on appeal that substantial evidence supports a UCP's decertification of a firm, that firm would automatically be decertified in all states. The proposal would not provide appeal rights to challenge an automatic decertification because the firm already had the opportunity to challenge its decertification after the UCP's initial determination. This proposal promotes program integrity and uniformity in certifications through a single action.

The proposed paragraph (g)(6) would not apply in instances where the Department affirms a decision because of failure to cooperate, since such cases are limited to a firm's interaction with one UCP.

22. Denials of In-State Certification Applications (§ 26.86)

Under existing paragraph (c) of § 26.86, when a firm is denied certification, the certifier must establish a waiting period of no more than twelve months before the firm may reapply. We propose removing the requirement for the certifier to gain OA approval before adopting a shorter waiting period, as we do not see the necessity for it. In May 2020, DOCR began requiring certifiers to include specific, verbatim appeal instructions in their denial letters.[36] We propose adding those instructions to § 26.86(a). Most notable in the instructions is a shorter timeframe for filing an appeal as well as notifying the firm that they have a right to request the documents that the certifier relied on to make its decision.

Under the current rule, the clock for the waiting period for reapplication begins to run on the date the applicant receives the denial letter; we propose that the period begin on the date the certifier sends the denial letter, which

[36] Email from Departmental Office of Civil Rights to Recipients.

in the majority of cases is done by email.

23. Decertification Procedures (§ 26.87)

Strict Compliance

Since the beginning of the DBE Program in 1983, rules have been in place that recipients/certifiers must follow when removing a DBE's certification. These rules are essential for ensuring that only eligible firms participate in the program. We reiterate that these rules exist to give certifiers the tools to take prompt action in a fair manner if a firm's circumstances, ownership, or control changes over time, resulting in once-eligible firms becoming ineligible. Certifiers' strict compliance with the program's decertification rules is critical to keeping intact appropriate due process protections afforded to DBEs and ensuring administrative efficiencies if or when the firm chooses to appeal a decertification decision to the Department. As such, decertification procedures are not to be perfunctorily executed. Given the inconsistent and erroneous manner in which we see certifiers sometimes implementing the procedures, we are proposing to streamline and strengthen the current language in § 26.87. Our goal is to make the procedures easier to understand so that they may be more easily followed. Although the substance of § 26.87 remains largely the same, we propose adding some requirements and clarifications.

In too many instances, we have seen certifiers issue pro forma notices of intent to decertify and pro forma final notices of decertification, with scant justifications articulated. Section 26.87 requires both notices to fully explain the reason(s) for moving to decertify a firm with references to specific evidence in the record. Sparse notices and blanket, incomplete, or cryptic references deprive the DBE of the ability to meaningfully respond and provide information that demonstrates its continued eligibility. Further, the certifier bears the burden of proof in decertification proceedings (*i.e.,* the certifier must show that, more likely than not, the DBE is no longer eligible for certification); notices not fulfilling the requirements of § 26.87 do not satisfy that burden. To address these issues, we propose more succinct and pointed language in paragraphs (b) and (g), which are respectively paragraphs (d) and (h) in the proposed rule. We also propose stating the burden of proof information at the very beginning of § 26.87.

Failure To Submit Declaration of Eligibility (DOE)

The Department notes an upward trend in the number of appeals from DBEs that certifiers decertified based on the DBE's failure to cooperate with a request(s) to submit a § 26.83(j) annual no-change affidavit (and now proposed as declaration of eligibility (DOE)). The responsibility of timely filing a DOE squarely falls on the DBE. There is no requirement that a certifier remind a DBE of the annual DOE submission deadline, though we are aware many do send reminders electronically through automated systems. In the preamble to the 2014 final rule we explained that a DBE's failure to provide a DOE after a request or reminder from a certifier is failure to cooperate under § 26.109(c), for which a certifier may initiate decertification proceedings. We also stated in 2014 that a certifier should not commence decertification proceedings simply because the DBE failed to meet the filing deadline; nor should decertification proceedings continue once the DBE submits the requested information. That statement unintentionally suggested that a DBE can fail to submit a DOE without consequence.

The proposed revision to § 26.87 would clarify that that is not the case. In the requirement for offering the firm an opportunity for an informal hearing, we are proposing an exception: the firm would not be entitled to a hearing if the ground for decertification is the firm's failure to timely submit a § 26.83(j) DOE. If the firm does not provide the DOE within 15 days of the notice of intent to decertify, the certifier *may* issue a final notice of decertification based on § 26.83(j) and/or § 26.109(c) without offering an opportunity for a hearing. The Department recognizes the time and resources a certifier must undertake to convene a decertification hearing, no matter the simplicity or complexity of the issues. The proposed exception to the informal hearing requirement would help certifiers conserve resources that in many instances are already limited.

Decertification Grounds

Section 26.87(e) lists the grounds upon which certifiers may initiate decertification proceedings. One of the grounds (§ 26.87(e)(5)) is if there is a change in DOT's certification standards or requirements after the firm was certified. The Department proposes an amendment to § 26.87(e)(5) stating that in the instance of a change in certification standards or requirements, the certifier must offer the firm, in writing, an opportunity to cure eligibility defects within 30 days. If the firm does not do so, the certifier may proceed with sending the firm a notice of intent to decertify. The Department's rationale is that certified firms should not be penalized for changes to certification standards of which they most likely are unaware and with which they might be able to comply—and thus remain eligible—if given the opportunity to do so.

Virtual Informal Hearings

Section 26.87(d) requires a certifier to offer a firm that it intends to decertify an informal hearing at which the firm may respond in person to the reasons for the intent to decertify. At the onset of the COVID–19 pandemic in March 2020, the Department issued guidance allowing certifiers to conduct a § 26.87(d) hearing using virtual methods such as (but not limited to) video conferencing.[37] We propose making permanent the option to conduct hearings virtually. In addition to reducing the risk of transmitting or contracting COVID–19 or other illness, virtual hearings would be more efficient for all parties because of the reduction in travel time and cost, as well as helping certifiers conserve financial and other resources that in-person hearings require. Moreover, the Department has not heard of any negative repercussions from conducting virtual informal hearings. The requirement for a certifier to maintain a complete, verbatim transcript remains intact.

However, having heard of instances in which a certifier or a DBE requests multiple date changes for the hearing (some we suspect may be attempts to delay an adverse finding), we seek to impose a deadline by which the hearing must occur. If the DBE elects not to have a hearing, we would propose to impose the same deadline by which the DBE would be required to submit written information or arguments regarding its eligibility. The deadline in both instances would be within 45 days of the date of the certifier's notice of intent to decertify (NOI). Otherwise, the *ad infinitum* potential for date changes would become excessively cumbersome for all parties, waste resources, and ultimately create unnecessary delay. Both the hearing and submission of written information would remain optional for the DBE, and we remind certifiers that a firm's decision not to attend a hearing or submit written

[37] See ''Memorandum—DBE and ACDBE Certification Procedures During COVID–19 Pandemic'' available at *https://www.transportation.gov/sites/dot.gov/files/2020-04/DOCR-20200324-001.pdf.*

information does not equate to a failure to cooperate.

Informal Hearing Participation

We also propose that during an informal hearing, only the socially and economically disadvantaged owner (SEDO) be permitted to answer questions related to the SEDO's control of the firm. Often, the purpose of the informal hearing is for the certifier to ascertain whether the SEDO in fact controls the firm. Responses from someone other than the SEDO do not allow a certifier to make an accurate or meaningful determination about the SEDO's role in the firm, such as whether the SEDO makes independent decisions about the firm's daily and long-term operations. Based on the Department's regular review of multiple hearing transcripts when firms appeal decertification decisions, the Department has seen instances of a non-SEDO or other party providing rehearsed and/or falsified responses on behalf of the SEDO regarding the SEDO's control of the firm. Thus, this proposed requirement would further protect the DBE Program's integrity and help prevent fraud. A representative of the SEDO, including an attorney, would still be permitted to attend and participate in the hearing, including answering questions about ownership, business size, the firm's structure, etc. A representative of the SEDO, including an attorney, would be permitted to ask the SEDO follow-up questions about any topic—including control—during the hearing. Other employees of the firm would still be permitted to answer questions about their own roles/experiences as well as other general aspects of the firm. We emphasize that the requirement for the SEDO to directly answer questions *only* applies to questions about control. We welcome comments from certifiers and firms on this proposal.

For similar reasons for proposing informal hearing and written submission deadlines, we propose a 30-day deadline in § 26.87(h) for a certifier to render a final decision following an informal hearing or receiving written information from the DBE.

24. Counting DBE Participation After Decertification (§ 26.87(j))

In response to requests for clarification and various concerns evidenced by recipients and other stakeholders, the Department is proposing the following revisions to § 26.87(j).

The first revision breaks out the current first paragraph into two paragraphs to clarify the effect of removing a DBE's eligibility prior to a prime contractor executing a subcontract with the DBE or prior to the recipient entering into a prime contract with the DBE. The Department believes that addressing each scenario in a separate subheading would not change the requirements of the rule; it would simply make it easier to understand by separately addressing each scenario in the current rule.

The next proposed revisions concern the effects of decertifying a DBE after it has entered into a subcontract with the prime contractor. The current rule states that the DBE's performance could continue to count toward the contract goal if it received notice of its decertification after the subcontract was executed. However, stakeholders have informed the Department that they have witnessed prime contractors taking advantage of this provision, particularly in the context of a design-build contract. On design-build contracts, prime contractors/developers may submit an open-ended DBE commitment plan, and only commit work to specific DBEs once they have been awarded a subcontract. In such instances, prime contractors have an incentive to add work to an existing contract with the now decertified firm. Prime contractors do this to avoid having to end the subcontract with the formerly certified firm and find another DBE to perform the additional work. This practice deprives other DBEs from being solicited to perform work on new subcontracts. Of course, in other situations, it may make sense to allow minor amendments, or a brief continuation, of a decertified firm's work on a contract to alleviate the burden of ending the subcontract and soliciting a new DBE subcontractor. To balance the two concerns, the Department proposes that prime contractors would only be permitted to add work or extend a completed subcontract with a previously certified firm if it obtains prior, written consent from the applicable recipient.

Further, DBEs have expressed concerns regarding the situation in which a DBE, after a subcontract has been executed between the DBE and the prime, becomes disqualified from the program because it was purchased or merged with a non-DBE firm, perhaps even by the prime contractor on the project. The current rule allows DBEs to continue to count toward contract goal credit, regardless of the reason they become disqualified from the program. The purpose of the current rule is to avoid burdening a prime contractor to find a replacement for a DBE that becomes ineligible after the subcontract was signed; the prime contractor already made a subcontracting commitment with a DBE that was certified at the time the commitment was made and should not have to repeat the process. The Department proposes an exception to this current rule because the Department has determined that the deprivation of opportunities for DBEs that results from a prime contractor's ability to continue to count work now performed by a non-DBE outweighs the burden for a prime contractor to make good faith efforts to solicit a new DBE, if necessary to meet the contract goal. Thus, the Department proposes to disallow continued credit toward a contract goal if the DBE's ineligibility after the subcontract is signed is the result of a purchase by, or merger with, a non-DBE firm. In that situation, the prime contractor would be required to use good faith efforts to replace the DBE if additional credit is needed to meet the contract goal.

25. Summary Suspension (§ 26.88)

Section 26.88 permits or requires the certifier to suspend a DBE's certification immediately under specified circumstances. In promulgating this rule in 2014, the Department intended for it to apply in extraordinary situations that jeopardize program integrity or when time is otherwise of the essence. We said in the 2012 NPRM that we sought a ''middle ground'' between not having a suspension rule at all, as was then the case, and, as ''many'' stakeholders urged, one that is universal and automatic. See 77 FR 54960 (Sept. 6, 2012). The middle ground was a rule requiring suspension upon the incarceration or death of a SEDO necessary to the firm's eligibility and permitting suspension in the event of ''[o]ther material changes.'' Preamble to final rule (79 FR 59577 (Oct. 2, 2014)). We noted the need for ''swift action'' when a ''dramatic change in the operation of the DBE occurs that directly affects the status of the company as a DBE,'' and our intent that suspensions be short and quickly resolved. Id. at 59578. We explained that our overall objective in adopting the current rule was ''to preserve the integrity of the program without compromising the procedural protections afforded DBEs to safeguard against action by certifiers based on ill-founded or mistaken information.'' Id.

The Department would like to add language in § 26.88 to permit a certifier to only rely on a *single* reason if the summary suspension is elective; if the suspension is for a mandatory reason, the certifier may rely on more than one reason. As already expressed, it is our

view that summary suspension is an extraordinary measure that greatly impacts a firm's operations. It is a severe remedy that certifiers should not invoke lightly and to which a firm should have adequate opportunity to respond. We believe the latter is critical to preserving a firm's due process rights. Furthermore, being permitted to only provide a single reason would rightfully narrow the focus of the summary suspension while retaining a certifier's discretion to decide the basis of the suspension.

We remain committed to the objective. Experience has shown, however, that the rule has not functioned as intended. Too often, the rule has needlessly jeopardized the DBE's viability, made the certifier's job harder, or provided unfair and unreasonable outcomes. It has produced divergent results among jurisdictions without much time-to-resolution improvement over standard § 26.87 proceedings. None of these outcomes enhances program integrity, reduces regulatory burden, or streamlines administration.

The proposal states clearer rules and would reduce burdens bilaterally. The language would clarify and simplify procedures, provide bright-line rules, and rebalance rights and responsibilities more equitably. It would specify what needs to happen and when. Individual provisions would spell out what certifiers must do to get a result within 45 days and what protections from arbitrary action DBEs could expect. The revised rule would require both parties to the suspension to act faster, which the Department believes is consistent with the gravity of the action, with procedural protections specified in much greater detail. We believe that both speed and precision bolster the integrity of the program.

We have tried to reduce ambiguity and remove internal inconsistencies. We do not believe, for example, that an ''expedited'' procedure should in fact delay the ''commence[ment]'' of an action to decertify. See current paragraphs (e) and (g). Similarly, current paragraphs (b) and (e) seem to take opposite sides on the question of whether § 26.87(d) procedures apply in resolving summary suspensions. The proposal would correct these problems and seize an opportunity. While the current rule requires nothing in the certifier's notice other than the fact that the DBE is suspended—the reason, the evidence, the DBE's response options, consequences, etc.—the proposed rule would require notice of the ''procedural protections'' to which we referred in 2012. We realize now that the current rule can be revised to afford greater fairness to DBEs. For example, under the current rule a DBE cannot meaningfully ''show cause'' in defense of the unknown, let alone do it quickly. We invite comments on our proposed revisions, which we believe will address the above-described deficiencies.

Proposed § 26.88(a) would consolidate the language in current paragraphs (e) and (f) about the temporary nature and consequences of summary suspension, with an important clarification and an essential simplification. The clarification would resolve the ambiguity in paragraphs (a) and (e) about whether a summary suspension triggers a § 26.87 proceeding and immediately activates all § 26.87 procedures. The Department does not believe it does. Otherwise, there would be no distinction between §§ 26.87 and 26.88 except the immediate penalty on the DBE. The current rule compounds the problem with hybridization: it converts swift suspensions into slower § 26.87 decertifications, which further obscures the rule's purpose and erodes its utility. Finally, the substantive reach of the current provisions is nearly identical. The proposed revision would eliminate much of the overlap and time lag by deeming a rule-compliant suspension decision to be a final decision appealable to the Department. It recognizes the reality that regular decertification proceedings almost always take more than 30 days, and it removes the additional, unintended burden to the DBEs of open-ended suspensions. The most obvious results would be time savings, burden reduction, and more business-critical certainty about what a suspension entails and how soon it would be resolved. Reinforcing and conforming changes elsewhere in § 26.88 would close structural gaps, shorten embedded deadline, and strengthen procedural integrity.

The simplification is small but critical to fairness and transparency. The proposed rule would require notice of the suspension by email. The change would eliminate the certified mail requirement, which needlessly burdens both parties. The DBE would receive immediate notice of the suspension, including information critical to its response. Emailing notice to the DBE at an email address provided by the DBE in its initial DBE application or its annual DOE would remove uncertainty about when the suspension is, or is deemed to be, effective. The certifier would save time and resources, both parties would know when the 30-day clock begins to run, and the DBE would have a meaningful opportunity to contest the suspension. We believe the change is essential to producing speedy and principled results. Short, clear rules in subsequent paragraphs would specify the contents of the notice, its effect, and the rights and responsibilities of certifier and firm.

Revised § 26.88(b) would alter the description of events requiring or permitting summary suspension. The most notable revision is also the most obvious. We propose to add as a mandatory suspension condition clear and credible evidence of the DBE's involvement in fraud or other serious criminal activity. This proposed change should be self-explanatory. The proposed provision would omit the two ''material change'' grounds for elective suspension as too subjective and better resolved by information request or § 26.87(b) notice. We consider the ''clear and credible'' standard a simplified, plain language encapsulation of the more extensive but less helpful explanation in the current rule.

The proposed rule would change the treatment of death and incarceration as suspension events. Our reasoning is that in a significant number of cases the event itself does not meaningfully affect program integrity. When a SEDO dies, a successor in interest may be able to demonstrate SED. We also believe that certifiers should be mindful of the effect of instantly removing certification at a time when the company is likely to be particularly vulnerable. Similarly, when a SEDO is incarcerated, the SEDO may be incarcerated for a minor offense of which s/he has not been convicted or on a charge that might not threaten program integrity. The decedent's estate, though not an individual, might reasonably be considered to represent the interests of SED persons. While we generally leave to the certifier's discretion which deaths or incarcerations demand immediate action, the new language in paragraph (b)(2)(i) would raise the bar. In short, deaths and incarcerations could trigger elective suspensions only if they clear that bar.

Finally, proposed § 26.88(b) would resolve the apparent tension between summary suspension's extraordinary nature and the current rule's explicit provision for suspension in the case of a DBE's SEDO's failure to comply with § 26.83(j) requirements. In this case, the rationales are procedural/administrative and substantive. Certifiers rightly point out that the magnitude of noncompliance unreasonably strains resources and hamstrings enforcement. The number of DBEs that do not comply strains the system in ways that sometimes preclude fair, efficient administration overall. We do not

believe that giving every noncompliant firm a full § 26.87 proceeding in each year of noncompliance is tenable, given the likelihood that many offenders once suspended will simply provide the DOE and gross receipts documentation. The current rule diverts resources from more productive uses.

The substantive rationale for retaining the No Change Affidavit (NCA)/Declaration of Eligibility (DOE) trigger for discretionary suspension is more compelling: program integrity depends on the NCA/DOE filing. The NCA/DOE substitutes for the much more burdensome option of periodically requiring DBEs to re-demonstrate that they meet all eligibility requirements. Section 26.83(h) prohibits such recertification requirements as unreasonably burdensome, and § 26.83(j) makes them unnecessary. The annual filing is the price of continued certification and one we consider more than reasonable. Hence our view that suspension is an appropriate remedy for a DBE's failure to comply with the relatively light burden of submitting a NCA/DOE to demonstrate its continued eligibility for the DBE Program. Notably, the proposal expands the universe of cases that can be resolved without invoking § 26.87, which greatly streamlines program administration.

We base these changes on stakeholder input and our own experience with the rule. In keeping with our oversight role, our primary concern is to maintain the integrity of the entire program. Local certifiers are better equipped than we are to consider issues such as changes in ownership of particular DBEs and whether such changes affect the DBE's eligibility for the program.

Proposed § 26.88(c)(1) specifies what the paragraph (a) notice must contain. The new language clarifies how §§ 26.87 and 26.88 differ and specifies the scope of each in the suspension context. It closes the gap (*i.e.,* the notice's due process role referenced above) between notice and result. The rest of the paragraph fleshes out the necessary particulars and limits potential abuse in equal measure on both sides. The new rules, with their component time limits, explicit burden allocations, waivers, and defaults, are the mechanical core of § 26.88. They will provide a realistic mechanism for achieving full, fair, and final resolutions within 30 days. We anticipate substantial efficiency gains from eliminating redundant processes and the much benefit to DBEs of certainty that any suspension will be fully and finally resolved by a date certain.

Proposed revisions in § 26.88(d) preserve the current rule's articulation of the firm's appeal rights and add a provision for injunctive relief when the certifier does not comply with the new time limitations. The DBE may request injunctive relief when the certifier, contrary to a new curb on its expanded discretion, electively suspends the same firm twice within a rolling one-year period. The DBE may also request injunctive relief when the certifier fails to lift a suspension by the 30th day. These curbs reinforce our intent that a brief discretionary suspension is a remedy to be employed judiciously.

26. Certification Appeals to DOCR (§ 26.89)

The overarching goals of the Department's proposed changes to this section are to increase administrative efficiency and enhance the clarity of existing rules by reordering the paragraphs and introducing a few requirements.

We recommend shortening the timeframe for filing an appeal from 90 to 45 days. The Department set the 90-day deadline prior to applicants commonly having access to email and the internet. The proposed timeframe matches the rule set by the SBA Office of Hearings and Appeals for firms determined ineligible for participation in SBA's 8(a) contracting program. See 13 CFR 134.404. We welcome comment from business owners on the feasibility of appealing within 45 days. We emphasize that we are not proposing any change to a firm's ability to show that there was good cause for a late filing and to explain why it would be in the interest of justice for the Department to accept the late filing.

While the Department will continue to accept appeals sent via mail or hand delivery, we encourage appellants to submit them via email to help decrease administrative costs and increase efficiency for all involved parties.

Next, the requirement in § 26.89(d) that certifiers send the Department administrative records that are well organized, indexed, and paginated has long been in existence. Nonetheless, the vast majority of administrative records we receive are poorly organized and not indexed. Having to weed through these types of records—most of which are many hundreds of pages—wastes time and can prevent the Department from issuing timely decisions. Moving forward, the Department will reject non-indexed or otherwise disorganized records that do not meet this standard and will request certifiers to immediately correct and resubmit them. A certifier's failure to comply with our request within seven days will be regarded as a failure to cooperate under § 26.109(c).

The Department would like to reinsert the language from § 26.89(c)(1) and (2), which were inadvertently omitted from the published rule during the 2014 revision. The first provision to be reinserted would require appellants to identify in their appeal the other certifiers that have certified the firm, which certifier(s) have rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of the appeal, and which certifier(s), if any, before which an application for certification or a removal of eligibility is pending. The second reinsertion would notify program recipients that in the event of an appeal, the Department would request the information described above, which the firm in question would be required to promptly provide.

In the interest of administrative efficiency, the Department proposes adding a paragraph that would allow DOCR, at its discretion, to summarily dismiss an appeal. DOCR would dismiss an appeal that does not set forth a full and specific statement under § 26.89(c). It is plausible that there are additional circumstances under which DOCR would decide to summarily dismiss. In every instance of a summary dismissal, DOCR's written notification would include an explanation for the decision and would instruct the parties what action(s) to take.

The proposed language for paragraph (e) restates portions of the current rules found in § 26.89(e) and (f)(1) and (2), in plain language and aggregates them. There is no substantive change.

We are also proposing a paragraph to clarify the parameters within which we give recipients technical advice. At present, we provide technical advice about the overall meaning and general implementation of the provisions of part 26 concerning DBE/ACDBE certification. Recipients sometimes give the Department a description of a specific firm's certification application and ask the Department to opine on the firm's eligibility. When that happens, the Department reminds recipients that determining certification eligibility is not within the Department's purview. If we issued advisory opinions, we would be effectively directing certifier's actions and altering the result. Doing so would violate basic separation of functions principles, as eligibility decisions are squarely the responsibility of the certifier, while we are responsible for considering appeals of certifiers' decisions. To make the reminder more permanent, we propose adding

§ 26.89(g) to definitively state that the Department does not issue advisory opinions.

We also wish to remove the references to SBA from § 26.89 because the former memorandum of understanding between SBA and DOT is no longer in effect.

Section 26.89(i) states a Departmental ''policy'' to make an appeal decision within 180 days of receiving the complete administrative record, that the Department will notify the parties of the reason(s) for a delay beyond this point, and to provide a date by which an appeal decision will be made. Recipients and appellants alike interpret this policy as a requirement that the Department issue decisions in 180 days and to do so by an absolute date. That was never the Department's intent, and we would like to clarify that the Department will issue a decision in 180 days ''if practicable,'' and changing the phrase ''date by which'' to ''approximate date.''

27. Updates to Appendices F and G

The Department proposes to remove from part 26 forms in Appendices F (Uniform Certification Application/UCA) and G (Personal Net Worth Statement). Official forms are not required to be reproduced in the Code of Federal Regulations (CFR). Moreover, the UCA and PNW Statement are readily available on DOT's website.[38] Removing the forms from the CFR is an administrative action and does not impact the ability of the public to comment on any amendments to the information collections contained in these forms.

The changes we are proposing to the UCA are largely technical in nature. They include updating website addresses, clarifying definitions, minimizing the use of pronouns, and providing more details on how applicants can learn more about the DBE and ACDBE Programs. The only substantive change we recommend is changing the term ''Affidavit of Certification'' to ''Declaration of Eligibility.'' We propose that change so that the same form can also be used in lieu of the current annual affidavit of no change that certified firms must annually submit. Using the same form for both purposes will increase efficiency and decrease burden for firms and certifiers alike.

On the PNW Statement, we propose adding a sentence in the introductory paragraph specifying the rule's PNW limit, changing the ''Spouse's Full Name'' field to ''Spouse or Domestic Partner's Full Name,'' and removing the ''Retirement Accounts'' field from the Assets column, consistent with our proposal of fully excluding retirement accounts from the personal net worth calculation.

Part 23

Subpart A—General

28. Aligning Part 23 With Part 26 Objectives (§ 23.1)

The program objectives for the DBE Program currently identified in § 26.1 are inconsistent with the program objectives for the ACDBE Program currently identified in § 23.1. Although the objectives are largely identical, a 2014 revision to § 26.1 added the following two objectives that are not included in § 23.1:

- To promote the use of DBEs in all types of federally assisted contracts and procurement activities conducted by recipients (''program objective 1''); and
- To assist the development of firms that can compete successfully in the marketplace outside the DBE Program (''program objective 2'').

For consistency with the program objectives in part 26, the proposed rule adds program objectives similar to § 26.1 of the DBE Program to § 23.1 for the ACDBE Program. Importantly, the concepts found in the DBE Program § 26.1 objectives 1 and 2 are already included in the ACDBE Program at § 23.25(c) and (d)(7).

29. Definitions (§ 23.3)

In the Department's experience, recipients need clarity on terms already used in this provision. Discussed below are a few of the definitions we propose adding or amending to clarify existing requirements in part 23 and to make provisions in part 23 consistent with the provisions of 49 CFR part 26.

Affiliation

The definition of ''affiliation'' under § 23.3 incorrectly references ''13 CFR 121.103(f),'' titled ''affiliation based on identity of interest.'' The SBA amended its regulation in 2004 redesignating ''(f)'' to ''(h).'' When the part 23 rule was finalized in 2005, the reference to 13 CFR 121.103(f) was inadvertently not updated to reference ''(h).'' See 58 FR 52050 (Oct. 8, 1993); 62 FR 29548 (May 30, 1997); and 65 FR 54454 (Sept. 8, 2000). Accordingly, the correct reference is to 13 CFR 121.103(h), titled ''affiliation based on joint ventures.'' Therefore, the proposed rule would make a technical correction to address the aforementioned error in the definition of ''affiliation'' in § 23.3.

Airport Concession Disadvantaged Business Enterprise (ACDBE)

Based on the definitions of ''Airport Concession Disadvantaged Business Enterprise'' and ''concession'' under § 23.3, certifying agencies are not clear when providing an ACDBE designation to an applicant if the firm does not currently operate an airport concession.

The current § 23.3 defines ''concession'' in part as one or more of the types of for-profit businesses in item 1 or 2.

1. A business, located on an airport subject to part 23, *that is engaged in* the sale of consumer goods or services to the public under an agreement with the recipient, another concessionaire, or the owner or lessee of a terminal, if other than the recipient.

2. A business conducting one or more of the following covered activities, even if it does not maintain an office, store, or other business location on an airport subject to part 23, as long as the activities take place on the airport:

> Management contracts and subcontracts, a web-based or other electronic business in a terminal or which passengers can access at the terminal, an advertising business that provides advertising displays or messages to the public on the airport, or a business that provides goods and services to concessionaires.

The 2000 supplemental notice of proposed rulemaking (SNPRM) opines that a ''small business concern'' must be an ''existing'' business but notes that the firm does not need to be operational or demonstrate that it previously performed contracts at the time of its application for certification. See 65 FR 54454, 54456 (2000). The terms ''engaged in'' and ''conducting'' in the current definition of ''ACDBE'' have led some certifying agencies to believe that they cannot provide an ACDBE designation to an applicant firm unless the firm already is engaged in an operational airport concession activity. Part 23, subpart C, ''Certification and Eligibility of ACDBEs'', does not address this. We agree with the perspective described in the 2000 SNPRM and propose amending. the definition of ''ACDBE'' under § 23.3 to clarify that a firm does not need to be operational or demonstrate that it previously performed contracts at the time it applies for certification.

Concession

A ''concession'' is defined as ''[a] business, located on an airport subject to this part, that is engaged in the sale of consumer goods or services to the *public* under an agreement with the recipient, another concessionaire, or the

[38] See *www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply.*

owner or lessee of a terminal, if other than the recipient.'' See § 23.3 (emphasis added). Some stakeholders contend that the definition of ''concession'' should apply only to businesses that serve the ''traveling public.'' In other words, even though the definition of ''concession'' in part 23 applies the term ''public,'' this should be interpreted to mean exclusively to the ''traveling public.''

In the past, the Department considered the issue of whether businesses that may occupy a portion of airport property serving the public in general, but that do not focus on serving passengers who use airport for air transportation, should be deemed ''concessions'' for purposes of the program. See 65 FR 54455 (2000). The Department determined that businesses on airport property that do not primarily serve the public should not be viewed as concessions. See 70 FR 14496, 14501 (2005). Instead, the term ''concession'' in part 23 refers only to businesses that serve the traveling public, except as otherwise provided in the definition of ''concession'' in the rule (*e.g.,* a hotel located anywhere on airport property is considered to be a concession).

The proposed rule revises the definition of ''concession'' to reflect the Department's interpretation that concessions are businesses who serve the ''traveling public.''

Personal Net Worth

The current definition of ''personal net worth'' (PNW) in § 23.3 exempts from inclusion in the PNW calculation the values of a maximum of $3 million dollars in assets, which an owner/applicant could demonstrate were necessary to obtain financing for purposes of entering or expanding a concessions business subject to part 23 at an airport (the ''PNW Third exemption''). This exemption was instituted in 2005 when the Department determined that raising the PNW cap for ACDBEs to enter the concessions industry was not the best solution to mitigate the high capital requirements of the industry. Instead, the Department determined that it was more appropriate to adopt exceptions such as the PNW third exemption. This exemption considered an individual's circumstances in order to avoid a ''glass ceiling'' effect of an across-the-board PNW standard. When adopting the PNW third exemption in 2005, the Department made clear that it believed the additional burdens of implementing the exemption were justified in the interest of opening business opportunities to ACDBEs. See 70 FR 14496, 14498 (Mar. 22, 2005).

Nonetheless, in the preamble to the 2012 final rule, the Department cited evidence showing that the PNW third exemption was infrequently used. The evidence also showed that when the exemption was applied, it often appeared to be the subject of considerable uncertainty and confusion on the part of ACDBEs and certifying agencies alike. Therefore, the Department suspended the exemption to consider whether the provision should be retained, modified, or deleted. See 77 FR 36924, 36928 (June 20, 2012).

The Department contemplated whether the inflationary adjustment of the underlying PNW cap to $1.32 million, which maintained the real dollar value of the previous $750,000 cap, may have the effect of mitigating what the Department had seen in 2005, as the need for adopting a provision of this kind. This NPRM proposes raising the PNW cap to $1.60 million, further obviating the need for the PNW third exemption. Also, given the indefinite state of suspension of the exemption with no firm applying it since 2012, the Department is proposing to delete the PNW third exemption from the definition of ''personal net worth'' in § 23.3.

Instead of removing the above exemption and other proposed changes to § 26.67(a)(2)(i), the Department proposes to simplify the definition of ''personal net worth'' in § 23.3 by amending the definition to have the same meaning as the term ''personal net worth, in part 26. See discussion above.

Socially and Economically Disadvantaged Individual

The term ''Native Americans'' within the definition of ''socially and economically disadvantaged individual'' in 49 CFR part 26 was revised in the Department's 2014 final rule to make it consistent with the SBA's definition of the term. See 79 FR 59566, 59579 (Oct. 2, 2014). This revision clarified that an individual must be an enrolled member of a federally or state recognized Indian tribe to receive the presumption of social disadvantage as a Native American in the DBE certification process. Consequently, the current definition of ''Native Americans'' in § 26.5 ''includes persons who *are enrolled members of a federally or State recognized* Indian tribe, Alaska Natives or Native Hawaiians.''

In contrast, the term ''Native Americans'' included within the definition of ''socially and economically disadvantaged individual'' in § 23.3 for the ACDBE Program fails to incorporate the requirement of Federal or state recognition. It includes ''persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.'' The existing definition of ''Native Americans'' in § 23.3 has not been updated to mirror its counterpart definition of ''Native Americans'' in § 26.5. The proposed rule amends the term ''Native Americans'' included under the definition of ''socially and economically disadvantaged individual'' in § 23.3 to conform to the wording of the term ''Native Americans'' included under the definition of ''socially and economically disadvantaged individual'' in § 26.5.

Sublease

Airports are encountering more complex subtenant arrangements between ACDBEs and primes. For instance, there are a growing number of agreements with primes that include provisions that bind tenants to more than simply the payment of rent. For example, these provisions might include providing services and supplies and profit-sharing. These new types of agreements raise questions of control, ownership, and the manner of counting ACDBE participation. They have given rise to the need for clarification as to what terms and provisions are appropriate in a sublease operation that would allow the ACDBE participation to count as direct ownership toward the ACDBE goal.

The term ''sublease'' is used in several sections of the regulation but is not defined. This has created uncertainty as to how to determine if the ACDBE participation should be counted as a sublease agreement. Other terms used in the regulation to reference sublease relationships include subconcession (§ 23.55 and the Uniform Report) and subcontract (§§ 23.3, 23.9, 23.47, and 23.55). The term ''subconcession'' is defined in the Uniform Report as ''a firm that has a sublease or other agreement with a prime concessionaire, rather than with the airport itself, to operate a concession at the airport.'' The regulation defines the term direct ownership arrangement as ''a joint venture, partnership, sublease, licensee, franchise, or other arrangement in which a firm owns and controls a concession.''

In 2011, the Airport Cooperative Research Program (ACRP), ''an industry-driven, applied research program that develops near-term, practical solutions to airport challenges'' published a Resource Manual for Airport In-Terminal Concessions intended to provide guidance on the development of airport concessions programs. Under the discussion of subtenant agreements (*i.e.,* subleases), it states that ''subtenants are

usually responsible for all aspects of their operations. Subtenants may be franchisees or licensees, or they may operate brands and concepts that they developed. Counting concession gross receipts generated by subtenants toward ACDBE goals is, for the most part, straightforward when subtenants use their own capital and workforce and manage the overall and day-to-day operations of their business.'' [39]

Airports are encountering an increasing number of unconventional subtenant arrangements that are termed ''subleases'' which in many cases contain restrictions that limit the ACDBE's control of its operations. In order to determine how to count ACDBE participation, a recipient must determine in what capacity the ACDBE is performing and whether the firm owns and controls the concession location.

The proposed rule would add a definition for ''sublease'' to clarify that the use of the words ''sublease, subconcession, or subcontract'' in describing the type of agreement is not controlling as to whether the participation should be counted as direct ownership. The proposed rule would also add the definition of the term ''subconcession'' to § 23.3, which currently only is found in the Uniform Report to part 23.

Subpart B—ACDBE Programs

30. Direct Ownership, Goal Setting, and Good Faith Efforts Requirements (§ 23.25)

By statute (49 U.S.C. 47107(e)(3)), recipients and businesses at the airport must ''make good faith efforts to explore all available options to achieve, to the maximum extent practicable, compliance with the goal through direct ownership arrangements, including joint ventures and franchises.'' This statutory good faith efforts requirement is addressed in the regulations at § 23.25(f), which mandates that a recipient include in its ACDBE Program a requirement for businesses subject to ACDBE goals at the airport, other than car rental companies, to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs.

The current § 23.25(e) provides for the ''use of race-conscious measures when race-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal.'' Establishing concession-specific goals is an example of an acceptable race-conscious measure that can be implemented. In establishing contract goals, § 23.25(e)(1)(i) and (ii) mandates that the goal can be set through direct ownership arrangements or through the purchase and/or leases of good and services. Additionally, § 23.25(e)(1)(iii) addresses the good faith efforts requirement, and states that ''to be eligible to be awarded the concession, competitors must make good faith efforts to meet this goal,'' referencing the narrowly tailored goal that was set in accordance with 49 CFR part 23, subpart D.

Some airports have interpreted the requirement under § 23.25(e) to mean that they must require competitors to always make good faith efforts to meet the goal through direct ownership arrangement regardless of how the goal was set. Stakeholders have requested clarification on when concessionaires must make good faith efforts to explore participation through direct ownership arrangements when a goal is established based on goods and services provided by ACDBEs as well as when a goods and services goal can or should be used.

It is important to note the parenthetical ''except car rental companies'' in § 23.25(f) is intended only to implement the statutory limitation in 49 U.S.C. 47107(e)(4)(C) against requiring car rental companies to change their corporate structure to include direct ownership arrangements as a means of meeting ACDBE goals. Notwithstanding this exception, car rental companies are still obligated to make good faith efforts to meet such goals.[40]

The proposed rule would amend § 23.25(e) and (f) to clarify direct ownership goal setting and good faith efforts requirements.

31. Fostering ACDBE Small Business Participation (§ 23.26)

This NPRM proposes a conforming amendment to add a small business requirement as under part 26 to the DBE Program (49 CFR part 23). The rationale for this proposed change is similar to the corresponding rationale for the requirement under the DBE Program. See 76 FR 5083, 5094 (Jan. 28, 2011).

The Department previously amended the ACDBE part 23 regulation to conform in several respects to the DBE rule via a June 20, 2012, final rule. However, in the preamble for this final part 23 rule, we contemplated but decided not to issue a parallel small business program requirement for the ACDBE Program. We explained that at the time, it was primarily focused on applying this provision to federally assisted contracting and associated issues such as ''unbundling.'' However, we acknowledged indications of barriers to ACDBEs in the concessions program that a small business element may help to alleviate. See 77 FR 36924, 36926 (June 20, 2012). We further stated that it would consider the comments in deciding whether to proceed with a small business provision for the ACDBE Program in the future, and that it hoped to learn from airport recipients' implementation of the small business element part 26.

The Department learned about the implementation of a small business element from airport recipients and their success in achieving race-neutral participation from small businesses, including DBEs, through this process. Moreover, we continue to receive feedback from stakeholders stating that there is a lack of concession opportunities of a size and nature that small businesses, including ACDBEs, can compete for fairly. Given the continued concerns expressed by stakeholders, we believe the inclusion of a small business element focused on concessions is warranted. Therefore, we propose adding a provision in part 23 that would closely mirror the § 26.39 requirement for recipients to create an element for their ACDBE Program specifically designed to foster small business participation. For purposes of monitoring compliance, this element would include a requirement for recipients to periodically report on the implementation of race-neutral strategies under the small business element for their programs.

32. Retaining and Reporting Information About ACDBE Program Implementation (§ 23.27)

Active Participants List

The Department proposes adding a ''bidders list'' requirement to part 23 like the one in part 26. Section 26.11(c) instructs recipients to create and maintain a bidders list with certain information about DBE and non-DBE contractors and subcontractors who seek work on federally assisted contracts. However, for part 23, this proposed rule would add a requirement for recipients to develop and maintain an ''active participants list.'' The term ''active participants list'' is used in place of ''bidders list;'' ''bidding,'' is generally

[39] The National Acadmey of Sciences, Engineering, & Medicine 2011, ''Resource Manual for Airport In-Terminal Concessions,'' Washington, DC: The National Academies Press., available at *https://doi.org/10.17226/13326.*

[40] See ''What are the Good Faith Efforts Obligations of Car Rental Companies to Meet ACDBE Goals at an Airport?'' available at *https://www.transportation.gov/sites/dot.gov/files/2020-01/docr-20160329-001carrentalcompaniesgoodfaitheffortsguidance.pdf.*

not used in the context of concessions. The active participants list would include all firms that have participated or attempted to participate in airport concession programs in previous years. See § 23.51(c)(2).

Similar to § 26.11(c)(1), one of the purposes of the ''active participants list'' would be to provide recipients with data that is as accurate as possible about the universe of ACDBE and non-ACDBEs who seek concession opportunities for use in helping recipients set overall goals for car rentals and concessions other than car rental. See § 23.41(a). Recipients could also use all the already available data methods of reporting and communication with their concessions community. See 64 FR 5096, 5104 (Feb. 2, 1999). Recipients may obtain information on firms interested in seeking concession opportunities from a number of sources, such as past experience with firms that have run concessions or sought concession contracts or leases, knowledge about the universe of firms in certain areas of retail and food and beverage service that tend to be interested in participating in airport concessions, and attendance lists from informational and outreach meetings about upcoming concessions opportunities. See 70 FR 14496, 14506 (Mar. 22, 2005).

As with the proposed change to § 26.11(c), the Department proposes to require recipients to enter this active participant list information into a centralized database that the FAA would specify. Requiring recipients to report this information into a centralized database would create a data source that would allow a more accurate analysis of firms actively seeking concession opportunities. In addition, a searchable, centralized database with information about active participants that includes an expanded dataset would aid recipients in evaluating ACDBE availability for goal-setting purposes.

We list in proposed § 23.27(c)(2) the types of data that recipients would be required to obtain and report. Recipients would be required to obtain and report for the active participants list requirement the same data sets under the proposed § 26.11(c)(2). In conjunction with the Department's proposal to add a similar MAP–21 reporting requirement to § 23.27, and its changes to the Uniform Report, the proposed active participants list reporting requirement would provide the Department with data showing how many and what types of ACDBEs are certified, how many ACDBEs are actively seeking concession opportunities as primes, joint venture participants or sub-concessions, and which of them are actually awarded concession opportunities.

To ensure uniformity of data collection for proper analysis, the Department proposes to add § 23.27(c)(3) to require a standard practice of requesting the information with proposals and initial responses to negotiated procurements.

As the Department noted for part 26 with the bidders list, the active participants list is a promising method for accurately determining the availability of ACDBE and non-ACDBEs. We also believe that creating and maintaining an active participants list will give recipients another valuable tool to measure the relative availability of ready, willing, and able ACDBEs when setting their overall goals. See 64 FR 5096, 5104 (Feb. 2, 1999). For this reason, the Department proposes to add a new paragraph (c) to § 23.27 to require recipients to develop and maintain an ''active participants list'' for their ACDBE programs.

Subpart C—Certification and Eligibility of ACDBEs

33. Size Standards (§ 23.33)

See discussion on § 26.65 above.

34. Certifying Firms That Do Not Perform Work Relevant to the Airport's Concessions (§ 23.39)

The regulatory definition of ''concession'' under § 23.3 allows firms that provide goods and services to concessionaires and do not maintain physical locations on airport property to be certified as ACDBEs. Firms that provide construction services for the build-out of concession facilities to concessionaires (*e.g.,* food and beverage, retailers, etc.) at airports satisfy the definition of ''concession'' under part 23. Hence, suppliers of goods and services (*e.g.,* architects, engineers, etc.) to these construction firms also meet the definition of ''concession'' and are not excluded from receiving ACDBE certification.

While the firms that perform these construction-related activities for concessions may qualify as ACDBEs, § 23.55(k) prohibits recipients from counting toward ACDBE goals the costs incurred in connection with the ''build-out'' of a concession facility, such as costs related to renovation, repair or construction. Section 23.55(k) was promulgated to address concerns that primes may use participation from construction firms completing build-out projects to primarily satisfy their goals instead of having ACDBEs meaningfully participate in as many other concession activities outside of construction.

Given that the definition of ''concession'' under § 23.3 includes suppliers of goods and services to concessionaires without excepting suppliers of goods and services for build-outs, stakeholders report that certifiers continue to provide ACDBE certification to construction firms and firms that supply goods and services to the construction industry. However, these firms often do not realize that their participation as ACDBEs cannot be counted until after they have gone through the certification process. Thus, many are left with having undergone the burden of obtaining certification and not obtaining airport jobs.

Firms seeking their ACDBE designation to perform construction-related activities exclusively in connection with build-out of concession facilities should not be granted certification given that the participation derived from those activities cannot be counted toward goals. Although existing regulations provide certifiers the discretion to withhold certification of firms that are certified as DBEs that seek ACDBE certification if they do not perform work relevant to the Program, the regulations are not explicit regarding whether certifiers possess the same discretion to deny certification to ACDBE applicants that are not certified as DBEs. See § 23.37(b). Therefore, the proposed rule would add a paragraph to § 23.39 explaining that certifiers must not certify applicant firms if they intend to perform activities exclusively related to the renovation, repair, or construction of a concession facility (sometimes referred to as the ''build-out'') for which participation cannot be counted toward an ACDBE goal.

Subpart D—Goals, Good Faith Efforts, and Counting

35. Removing Consultation Requirement When No New Concession Opportunities Exist (§ 23.43)

The current § 23.43 requires recipients to consult with stakeholders before submitting overall goals to the FAA. Recipients must submit goals every three years, which may include periods when there are no concession opportunities to evaluate. See § 23.45(b). Examples of stakeholders with whom recipients must consult include, but are not limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves. See § 23.43(b). Meaningful consultation with

stakeholders is an important, cost-effective means of obtaining relevant information from the public concerning the methodology, data, and analysis that support the overall ACDBE goal. See 79 FR 59566, 59581 (Oct. 2, 2014). The type of information that might be derived from these consultations includes the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and recipients' efforts to increase participation of ACDBEs. See § 23.43(b).

The Department's guidance, titled ''Tips for Goal Setting,'' discusses the need for consultation as a source in determining an adjustment to the base goal figure. It states, in part: ''In determining whether or not your base figure should be adjusted to account for the effects of past discrimination, you should consider consulting with the following organizations and institutions to determine whether they can direct you to information about past discrimination in public contracting; discrimination in private contracting; discrimination in credit, bonding or insurance; data on employment, self-employment, training or union apprenticeship programs; and/or data on firm formation.'' [41]

Stakeholders expressed that the regulatory requirement for recipients to perform consultation when there are no concession opportunities to evaluate or promote is misleading and burdensome. They argue that it would be more meaningful if they only had to conduct stakeholder consultation when their goal methodology would include new concession opportunities.

The Department agrees that consultation work is most appropriate in gathering narrative data to adjust the base goal figure and when there are concession opportunities to promote. The consultation requirement becomes unnecessary without relative availability of new concessions opportunities to analyze or a base figure to adjust.

The proposed rule would require consultation only when the ACDBE goal methodology includes opportunities for new concession agreements.

36. Non-Car Rental Concession Goal Base (§ 23.47)

Section 23.47 requires recipients to include in the base of the overall goal for concessions other than car rentals the total gross receipts of all concessions at the airport, with the following specific exclusions: (1) the gross receipts of car rental operations; (2) the dollar amount of a management contract or subcontract with a non-ACDBE; (3) the gross receipts of business activities to which a management or subcontract with a non-ACDBE pertains; and (4) any portion of a firm's estimated gross receipts that will not be generated from a concession.

However, § 23.25(e)(1) provides for establishing concession-specific goals for particular concession opportunities. Specifically, it provides that if the objective of the concession-specific goal is to obtain ACDBE participation through a direct ownership arrangement with an ACDBE, recipients must calculate the goal as a percentage of the total estimated annual gross receipts from the concession. See § 23.25(e)(1)(i). It further provides that if the goal applies to purchases and/or leases of goods and services, recipients must calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire. See § 23.25(e)(1)(ii).

Since the overall goal is an analysis of concessions opportunities and concession-specific goals set on those opportunities, recipients have requested clarification on what to use as their base for their overall goal when the concessions opportunities will yield participation through the purchase of goods and services from concessionaires. Recipients report situations where participation for some non-car rental concessions can only be reasonably expected to be achieved in the form of goods and services purchases.

The Department explained in the 2000 SNPRM for parts 23 and 26 that ''[c]onsistent with statutory requirements, management contracts and purchases by concessions from DBE suppliers form part of the goal.'' 65 FR 54454, 54457 (Sept. 8, 2000) Where direct ownership arrangements are not practicable, it is permissible to add the potential value of management contracts or subcontracts with ACDBEs and goods and services to be purchased by concessionaires from ACDBEs when calculating overall goals. These amounts are added to the base for the overall goal in both the numerator and denominator.

The proposed rule would amend § 23.47(a) to provide for the goal setting requirements set forth in § 23.25.

37. Counting ACDBE Participation After Decertification (§ 23.55)

Both §§ 23.39(e) and 23.55(j) provide that upon an ACDBE firm losing its ACDBE certification because the firm exceeded the small business size standard or because an owner has exceeded the PNW, the participation of the ACDBE firm may be counted toward ACDBE goals during the remainder of the term of a concession agreement. Specifically, § 23.39(e) also requires that ''the firm in all other respects remains an eligible DBE'' as a condition to continue counting their participation.

When a firm is certified, it is required to report changes that impact its eligibility by submitting annual affidavits that provide either notice of no changes or notification of changes in accordance with § 26.83(i) and (j), made applicable to part 23 by § 23.31. However, there is currently no provision in the regulation to monitor whether a firm whose ACDBE certification was removed solely for exceeding the size standard or PNW cap, but remains eligible for ACDBE certification in all other respects, remains an eligible ACDBE for the purpose of counting its participation. Of note, once a firm loses its certification as an ACDBE due to exceeding the business size standard or PNW cap, it is no longer obligated to provide the information or affidavits required by § 26.83.

Section 23.39(e) provides that firms whose ACDBE certification has been removed because of size or PNW must continue to meet the ownership and control eligibility requirements to be counted for the duration of a concession agreement. Stakeholders have highlighted the need to monitor if it is appropriate to continue counting the participation of ACDBEs once they lose their ACDBE certification due to size or personal net worth standards. This type of monitoring is necessary and the proposed rule amends § 23.55(j) to require those firms to continue to report changes by submitting declarations similar to those affidavits required of DBEs by § 26.83(i) and (j). This should be carried out only with respect to their ability to meet ownership and control requirements, as a condition to continue counting their participation.

Under the proposed rule, firms would report changes to recipients rather than UCPs, given that the firms' participation is counted by airports. That is, as a condition to counting a firm's continued participation in the ACDBE Program upon losing certification due to failure to meet size or PNW standards, the firm would be required to submit an annual declaration that provides either notice

[41] See ''Tips for Goal Setting in the Disadvantaged Business Enterprise (DBE) Program'' available at *https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise.*

of no changes or notification of changes similar to those required by § 26.83(i) and (j). More specifically, firms would be required to submit a declaration to report any change in their circumstances affecting their ability to meet ownership and control requirements under part 23. In addition, a ''no change declaration,'' submitted annually to the airport, would affirm that there have been no changes in the firm's circumstances affecting its ability to meet these ownership or control requirements. Should an ACDBE firm fail to provide a no change declaration, the recipient would cease counting the firm's participation toward ACDBE goals.

Firms would need to report a change in ownership through a notice of change declaration because the change might impact the recipient's ability to count the participation of that firm. For example, if a previously certified ACDBE firm was sold or a controlling interest in the firm was sold to a non-ACDBE, its participation would cease to be counted as of the date of the sale based on § 23.39(e). A sale constitutes a material change that impacts the ownership and control eligibility requirements in part 23. Therefore, the counting of the ACDBE's participation would no longer meet the requirements of § 23.39(e), which states in part that ''in all other respects [the firm] remains an eligible [AC]DBE.'' However, if the sale is made to a ACDBE firm that meets all eligibility criteria under the ACDBE Program, recipients should not disqualify the firm's participation from counting under § 23.55(j).

Upon notice of a sale or change of ownership, recipients should verify via state electronic directories whether the firm or a controlling interest in the firm was sold to a ACDBE. Once the sale or change of ownership is verified, the recipient's monitoring obligation as well as the selling firm's reporting requirements under this recommendation would cease. Therefore, the UCP would be solely responsible for keeping current on the status of the acquiring firm's ACDBE's certification status and the ACDBE would continue to comply with its reporting obligations under § 26.83(i) and (j) as required, prior to acquiring the firm or a controlling interest therein.

The Department proposes to delete § 23.39(e), and redesignate paragraphs (f) and (g) as paragraphs (e), (f), and (g) under § 23.39. Both §§ 23.39(e) and 23.55(j) address the identical issue concerning continued counting, and therefore, there is no valid justification for having these two differently worded sections instituting the same rule.

38. Shortfall Analysis Submission Date (§ 23.57)

Section 23.57(b) requires recipients to conduct a shortfall analysis and establish steps and milestones as corrective actions (collectively, ''Shortfall Analysis'') if the recipient fails to meet its overall goal for the fiscal year. See § 23.57(b)(1) and (2). The Shortfall Analysis must be submitted to FAA within 90 days of the end of the Federal fiscal year. See § 23.57(b)(3)(i). In contrast, § 23.27(b) requires recipients to submit an annual Uniform Report of ACDBE Participation (''Uniform Report'') by March 1 of each year. Stakeholders expressed concerns over the due date of the Shortfall Analysis under part 23 as it becomes due before the Uniform Report is due.

Part 26 includes a similar requirement; however, the shortfall analysis is due 30 days after the Uniform Report is due. This affords recipients 30 days after they are required to submit the report to analyze the data in the Uniform Report. See § 26.47(c)(3)(i).

The proposed rule would extend the due date of the part 23 Shortfall Analysis by amending § 23.57(b)(3)(i) to allow recipients to submit the Shortfall Analysis 30 days after they submit their Uniform Report.

Subpart E—Other Provisions

39. Long-Term Exclusive Agreements (§ 23.75)

Five-Year Term for Long-Term Agreements

Section 23.75(a) prohibits recipients from entering into ''long-term, exclusive agreements'' (LTE) for concessions without prior FAA approval based on very limited conditions that are outlined in the regulation. The reason for this general prohibition is to limit situations where an entire category of business activity is not subject to competition for an extended period through the use of an LTE agreement. See Principles for Evaluating Long-Term, Exclusive Agreements in the ACDBE Program, June 10, 2013 (LTE Guidance).[42]

Stakeholders suggest that the five-year term in the definition contained in § 23.75(a) is too short. As an alternative, stakeholders suggested that ''long-term'' should be re-defined to a minimum of ten years given that the term of the typical concession lease agreement is generally ten years or longer, per industry standards.

[42] See ''Principles for Evaluating Long-term, Exclusive Agreements in the ACDBE Program'' available at *https://www.faa.gov/sites/faa.gov/files/about/office_org/headquarters_offices/acr/LTE_Guidance_Final.pdf.*

The Department discussed the definition of ''long-term agreement'' under § 23.75 in the preamble to the 2005 final rule, which states that ''[o]ne airport suggested making 10 years rather than 5 years the criterion for a long-term exclusive lease subject to this section. We have not adopted this comment because doing so would reduce the degree of oversight FAA can exercise under the rule to make sure that long-term concession agreements include adequate ACDBE participation.'' (70 FR 14496, 14507 (March 22, 2005))

The need for oversight remains unchanged. It is worth noting that concession agreements with terms that exceed five years but do not meet the definition of ''exclusive'' need not be submitted for FAA approval under the rule. The Department seeks comments on keeping the term at 5 years rather than revising it to 10 years. See section 1.2 of LTE Guidance.

Long-Term Agreements and Options

Section 23.75(a) does not address whether a concession agreement becomes ''long-term'' if its duration exceeds the five-year threshold as a result of options. The LTE Guidance explains that a long-term agreement is one that has a term of more than five years, including any combination of base term and options (*e.g.,* options to extend the term of the lease agreement, or to expand the scope of the agreement to a new section or terminal, or to enter into a new contract, etc.) if the effect is a lease period of more than five years. See section 1.3 LTE Guidance. The Department proposes to amend the definition of ''long-term agreement'' under § 23.75(a) to state that options are subject to the regulation's requirements if the options result in a lease period of more than five years.

Long-Term Agreements and Holdovers

Holdover provisions of an airport lease typically allow the airport sponsor to extend the terms of an existing airport lease without execution of a new lease, which are distinct from options. Options involve an extension of the lease and sometimes an adjustment in rental rates for the extended period set by the option. In contrast, holdover provisions are meant to provide a short-term extension of the protections and terms described within the lease document. Notwithstanding the fact that holdover provisions are designed to bridge gaps to meet the short-term needs of the parties, holdover tenancies that cause an exclusive agreement to extend the term beyond five years may preclude potential ACDBE competitors from participating in the agreement in

the same manner as long-term exclusive agreements requiring approval by the FAA per § 23.75.

The Department seeks public comment on how to address holdovers that would result in short-term exclusive agreements becoming long-term without FAA oversight, leading to the possible circumvention of § 23.75.

Definition of Exclusive Agreement

Section 23.75 prohibits sponsors from entering into long-term exclusive agreements for the operation of concessions except under limited conditions and subject to FAA approval. Section 23.75(a) contains a definition of ''long-term agreement'' but does not define an ''exclusive agreement.'' However, the FAA's LTE Guidance defines the term ''exclusive'' as follows:

> For purposes of this guidance and in accord with 49 CFR Section 23.75, the term ''exclusive'' is defined as a type of business activity that is conducted solely by a single business entity on the entire airport. In the context of this guidance, the concept of ''exclusive'' includes the absence of any ACDBE participation. (LTE Guidance, section 1.2) [43]

The intent of § 23.75 is to provide for the review of LTE agreements to ensure adequate ACDBE participation throughout the term of the agreement, irrespective of whether an ACDBE or a non-ACDBE enterprise is the prime concessionaire being considered for award of an exclusive, long-term agreement. See 57 FR 18400, 18401 (Apr. 30, 1992). Therefore, the Department proposes to add the definition of ''exclusive agreement'' to § 23.75(a) to be consistent with the LTE guidance's discussion of the term ''exclusive.''

Amending Document Requirements

Section 23.75(c) requires recipients to submit to the FAA various documents and information to obtain approval from the FAA of an exclusive LTE agreement. In Fiscal Year 2020, the FAA held several listening sessions with stakeholders in reference to part 23. Stakeholders shared their concerns regarding LTE requirements for documentation, specifically, that some of the LTE requirements for documentation and information were unclear, not feasible, or pertinent. Moreover, we understand that certain documentation and information required under the existing rule are typically not available before a concession opportunity solicitation is published.

[43] Id.

The Department believes these concerns merit addressing and proposes the following changes to § 23.75(c):

- Amend the introductory text in § 23.75(c) to allow for certain documentation and information required for approval of an LTE agreement under this section to be submitted prior to the release of the solicitation or request for proposals and others, prior to award of the contract.
- Delete § 23.75(c)(2)(i) as there may not be opportunities for direct ownership.
- Delete § 23.75 (c)(2)(ii) as the existing rule can be improperly read to permit the prime concessionaire to terminate ACDBEs on an operation, after the ACDBEs made an investment. Relatedly, delete § 23.75(c)(2)(iii), as the termination provision language is inconsistent with the requirements of § 26.53 and the provisions of § 26.53(f). These termination provisions apply to part 23 by reference and address replacement or substitution of ACDBEs.
- Replace the current provision in § 23.75(c)(3) that requires ACDBE participants to be in an acceptable form such as a sublease, joint venture, or partnership, with a requirement for recipients to submit an ACDBE contract goal analysis developed in accordance with part 23.
- Amend § 23.75(c)(4) to specify that documentation that ACDBE participants are certified in the appropriate NAICS code need only be provided before award of the concession contract.
- Amend § 23.75(c)(5) to only require a general description, including location and concept of the ACDBE operation, and require the information to be submitted only prior to final award, *i.e.,* allowing information to be submitted after prime concessionaire selected.
- Lastly, delete the current provisions in § 23.75(c)(7) as actual information on estimated gross receipts and net profits are not available at the solicitation stage. Requesting data on net profit to be earned by the ACDBE is not equitable because the process does not require the same information from the non-ACDBE. Insert in its place, a provision to allow recipients to submit agreements in draft form prior to the release of the solicitation or RFP, and to subsequently provide the final agreements prior to award of the contract.

40. Local Geographic Preferences (§ 23.79)

This NPRM provision proposes to revise § 23.79 to make it clear that local geographic preferences are not permitted regardless of concession certification status. This change is needed to address confusion about whether the local geographic preference limitation under § 23.79 applies only to ACDBEs.

This change would be consistent with the Department's views from 2005 part 23 final rule. The ACDBE Program is a national program, and some concession markets are national markets. Under these conditions, a local preference program is out of place. The disadvantages of local preferences, such as the elimination of benefits of wider competition for business opportunities and the possible loss of opportunities for ACDBEs who are not located in the locality served by an airport, continue to be important to warrant prohibiting local preferences in the context of the ACDBE Program. (70 FR 14496, 14507 (March 22, 2005))

Revising this section would make clear that a local geographic preference that gives a concession located in a local area an advantage over concessions from other places in obtaining business as, or with, a concession at an airport is prohibited. However, while recipients cannot limit solicitations to local concessionaires or use local geographic preference as a selection criterion, recipients may request concepts that are local to a specific region when soliciting proposals. We understand the objective of local concepts is to create a sense of place for passengers, but this does not extend to local geographic preferences that limit concession awards to local concessionaires.

41. Appendix A to Part 23: Uniform Report of ACDBE Participation Form

The Department proposes removing the Uniform Report of ACDBE Participation from appendix A to part 23. Official forms are not required to be reproduced in the CFR; this report will be posted on the DOT website. Removing this form from the CFR is an administrative action and would not impact the ability of the public to comment on any amendments to the information collections contained in the form.

Section 23.27(b) requires recipients to complete and submit an annual report on ACDBE participation using the Uniform Report found in appendix A. The Department proposes several amendments to the Uniform Report to enhance the accuracy of participation reported and address stakeholder concerns. In lieu of the above proposal to remove appendix A from the CFR, the following amendments would be found in the Uniform Report.

Block #5 Instructions of Appendix A, Definition of Goods and Services

The Uniform Report's block #5 instructions state that ''[. . .] 'Goods/services' refers to those goods and services purchased by the airport itself or by concessionaires and management contractors from DBEs.'' Block #5 encompasses all non-car rental cumulative ACDBE participation during the reporting period.

There are several participation categories (*e.g.,* prime concessions; subconcession; management contracts; and goods and services) listed in the Uniform Report under which gross revenues, and goods and service expenditures are to be reported. These categories include ''prime concession'' which is defined as ''concessions who have a direct relationship with the airport (*e.g.,* a company who has a lease agreement directly with the airport to operate a concession).'' The category ''subconcession'' is defined as ''a firm that has a sublease or other agreement with a prime concessionaire, rather than with the airport itself, to operate a concession at the airport.'' Because airport recipients do not meet either the definition of a ''concession'' or ''concessionaire,'' it is the Department's view that goods and services purchased by recipients should not be reported in the Uniform Report.

The proposed rule would amend the definition of ''goods/services'' in the block #5 instructions to clarify that only participation in the form of goods and services purchased by concessionaires and management contractors from DBEs should be reported. The definition of ''subconcession'' is currently in the Uniform Report but not in the § 23.3 list of definitions. The Department proposes adding the definition to § 23.3.

Block #5 New Joint Venture Participation Category

Stakeholders expressed that the Uniform Report should be modified to address the reporting of participation of joint venture partnerships as compared to participation from goods/services purchases or sub-concessions. The proposed rule would amend blocks #5, #6, #8, and #9 to incorporate a separate row for reporting joint venture participation. The proposed rule also would amend the instructions in all blocks of the Uniform Report to include the definition of ''joint venture'' as defined in § 23.3 as a new participation category and provides directions on how to count ACDBE participation derived from joint ventures.

Blocks #10 and #11 Reporting of ACDBEs Owned by Members of Different Socially Disadvantaged Groups

The Uniform Report does not provide for the reporting of ACDBEs owned by multiple partners who are from different groups whose members are presumed socially and economically disadvantaged (SED). Block #10 instructs recipients to break down the cumulative ACDBE participation figures from blocks #5 and #8 by race and gender categories. The data reported under block #10 only permits reporting of firms by race and gender by one group whose members are presumed SED. Block #10 does provide a column for ''other,'' but this is used to report participation by individuals who are found disadvantaged on an individualized basis.

To enhance the accuracy of participation reported in the Uniform Report, the Department proposes to amend the requirements under block #11 in the Uniform Report to allow for participation to be reported by ACDBEs that are owned by multiple individuals of different races, ethnicities, and/or genders.

42. Technical Corrections

In addition to substantive proposed changes to part 23, the Department is proposing a number of technical amendments. These amendments fall into the following categories: (1) additions and amendments to make provisions in part 23 consistent with the provisions of Part 26; (2) additions or amendments to provisions to clarify existing requirements in part 23; and (3) corrections of typographical errors, and revisions to obsolete and/or duplicative provisions, and cross-references within the regulation. Some of these proposed technical amendments to part 23 are discussed below.

Obsolete Dates in § 23.31

Regulatory changes instituted in 2005 direct airports or UCPs to review the eligibility of ACDBEs to make sure that they met the eligibility standards of part 23. More specifically, § 23.31(c)(1) and (2) direct airports or UCPs to complete these eligibility reviews by no later than April 21, 2006, or three years from the anniversary date of each firm's recent certification. Additionally, recipients are obligated by these regulations to direct DBEs to submit by April 21, 2006, a PNW statement, a certification of disadvantage, and a No Change Affidavit.

These deadlines have expired. In addition, the date is confusing, especially to participants new to the ACDBE Program. Section 23.31(c)(1) and (2) was promulgated in 2005 to account for new PNW criteria instituted in 2005, triggering the need to review certified firms to ascertain their PNW. During the 17 years following the adoption of the 2005 regulation, there has been ample time for review of PNW standards. In addition, § 26.83(h) through (j), made applicable by § 23.31(a), provides for certification reviews of DBEs, annual certification of disadvantage, and notification of changes regarding circumstances affecting certification, including size and PNW standards. Hence, § 23.31(c) is unnecessary and the Department recommends deleting it.

Uniform Certification Application (UCA) Inconsistencies

The current § 23.39(g) which would become paragraph (f) under the above proposed redesignation, requires UCPs to use the UCA to certify firms for the ACDBE Program. However, the language of § 23.39(g) is inconsistent with § 26.83(c)(2), made applicable to part 23 by § 23.31. In addition, § 23.39(g) is inconsistent with the revised UCA that the Department published in 2019. The proposed rule would therefore delete § 23.39(g)(1) through (3) and revise § 23.39 to be consistent with § 26.83(c)(2) and the revised UCA.

Enhanced Consistency with Part 26

Sections 23.39(a) and 26.83(c)(1) detail the requirements for determining the eligibility of firms for the ACDBE and DBE programs. The introductory text in paragraph (a) of § 23.39 lists by reference several provisions in § 26.83(c) that are not to be applied to part 23; the provisions that are not specifically excluded remain applicable to part 23 via § 23.31(a).

Notwithstanding slight differences between part 23 and part 26 certification, all of the requirements of § 26.83(c)(1)(i) through (viii) generally apply to part 23 certification, but various modifications to the cross-references make § 23.39 difficult to follow as written. To address this, the Department proposes to simplify the rule by excluding all of the provisions of § 26.83(c)(1)(i) through (viii) and stating each of those requirements in § 23.39(a) in a manner that is consistent with the ACDBE Program.

Regulatory Analyses And Notices

A. Executive Order: 12866 (''Regulatory Planning and Review''), Executive Order 13563 (''Improving Regulation and Regulatory Review''), and DOT Regulatory Policies and Procedures (49 CFR Parts 23, 26)

The proposed rule is not a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' as supplemented by Executive Order 13563, ''Improving Regulation and Regulatory Review.'' Accordingly, OMB has not reviewed it under that Executive order. It is also not significant under the Department's regulatory policies and procedures.[44]

The proposed rule would amend reporting and eligibility requirements for the Department's Airport Concession Disadvantaged Business Enterprises (ACDBE) program and Disadvantaged Business Enterprise (DBE) program. These programs are implemented and overseen by recipients of certain Department funds. The changes to the proposed rule would affect businesses participating in the programs, recipients of Department funds who oversee the programs, and the Department.

The Department conducted a regulatory impact analysis, available in the docket, to assess the effects of the proposed rule. Businesses, recipients, and the Department would incur some costs due to increased reporting requirements. At the same time, they would experience cost savings overall because the rule would relax requirements—for example, by allowing recipients to conduct virtual on-site visits—and clarify regulations.

Table 1 summarizes the estimated costs and cost savings of the rule over a ten-year analysis period. The rule has annualized net cost savings of $6.2 million at a 3 percent discount rate and $6.1 million at a 7 percent discount rate. DOT requests comment on the assumptions made and conclusions drawn in the regulatory impact analysis.

TABLE 1—COSTS AND COST SAVINGS OF THE PROPOSED RULE, 10-YEAR PERIOD

[Rounded to thousands]

	Undiscounted	Present value 3%	Annualized 3%	Present value 7%	Annualized 7%
Total cost savings	202,778,000	177,991,000	20,865,000	152,057,000	21,649,000
Total cost	140,623,000	125,153,000	14,672,000	108,953,000	15,513,000
Net cost savings	62,155,000	52,838,000	6,193,000	43,104,000	6,136,000

B. Executive Order 13132 (''Federalism'')

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13121 (''Federalism''). It would not include any provision that: (1) has substantial direct effects on the states, the relationship between the National Government and the states, or the distribution of power and the responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on state and local governments; or (3) preempts state law. The DBE and ACDBE programs are governed by Federal regulations 49 CFR parts 26 and 23. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084 (''Tribal Consultation and Coordination'')

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this rulemaking does not significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Unfunded Mandates Reform Act

The Department has determined that the requirements of the Title II of the unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

E. National Environmental Policy Act

The Department has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions 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 environmental assessment (EA) or environmental impact statement (EIS). The purpose of this rulemaking is to amend the Department's DBE and ACDBE regulations. Paragraph 4(c)(5) of DOT Order 5610.1C incorporates by reference the categorical exclusions for all DOT Operating Administrations. This action is covered by the categorical exclusion listed in the Federal Transit Administration's implementing procedures, ''[p]lanning and administrative activities that do not involve or lead directly to construction, such as: . . . promulgation of rules, regulations, directives. . .'' 23 CFR 771.118(c)(4). In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended, (5 U.S.C. 601 *et seq.*) and E.O. 13272 (67 FR 53461, Aug. 16, 2002) requires agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it determines and certifies that a rule, if issued, would not have a significant economic impact on a substantial number of small entities. DOT has not determined whether the NPRM would have a significant economic impact on a substantial number of small entities.

The Department prepared an IRFA as part of the Department's regulatory impact analysis (appendix C of the regulatory impact analysis), available in the docket. DOT invites all interested parties to submit data and information regarding the potential economic impact on small entities that would come from promulgating the NPRM. DOT will consider all information and comments

[44] See ''DOT Order 2100.6A, Rulemaking and Guidance Procedures'' available at *https://www.transportation.gov/sites/dot.gov/files/2021-06/DOT-2100.6A-Rulemaking-and-Guidance-%28003%29.pdf.*

received in the public comment process when preparing the Final Regulatory Flexibility Analysis.

G. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 49 U.S.C. 3501, 3507) requires Federal agencies to obtain approval from the Office of Management and Budget (OMB) before undertaking a new collection of information imposed on ten or more persons, or continuing a collection previously approved by OMB that is set to expire.[45] On March 1, 2022, OMB renewed its approval of five information collection instruments that were previously approved in 2018 (OMB Control No. 2105–0510).[46] Nonetheless, the Department is resubmitting them to OMB because the proposed rule modifies, and in some cases, reduces PRA burdens. On March 10, 2022, OMB took under consideration the Department's request for an OMB Control Number for 17 additional part 26 information collection instruments that had not previously been submitted for approval (ICR Reference No: 202203–2105–001). On April 27, 2022, OMB took under consideration the Department's request for an OMB Control Number for part 23 collection instruments that had not previously been submitted for approval (ICR Reference No: 202204–2120–002).

This proposed rule would add new collection instruments as well as modify existing collection instruments in both parts 23 and 26. The following is a description of the sections that contain new and modified information collection requirements, along with the estimated hours and cost to fulfill them.[47]

1. ACDBE Small Business Element (New Requirement)

CFR Section: 49 CFR 23.26.
Respondents: Primary airports.
Number of respondents: 396.
Frequency: Once each year.
Number of responses: 396.
Hours per response: 5.6 hours.
Wage rate: $72.35/hour.
Total annual burden: 14,097.6 hours and $1,019,961.36.

2. ACDBE Active Participants List (New Requirement)

CFR Section: 49 CFR 23.27(c).
Respondents: Primary airports and ACDBE and non-ACDBEs that seek to work on concession opportunities.
Number of respondents: 396 primary airports; 3,945 ACDBE and non-ACDBEs.
Frequency: once each year.
Number of responses: 396 primary airports; 3,945 ACDBE and non-ACDBEs.
Hours per response: 42 hours per primary airport; .5 hours per ACDBE and non-ACDBE firm.
Wage rate: $72.35/hour.
Total annual burden: 16,632 hours and $1,203,325.20 for primary and non-hub airports; 1,972.5 hours and $0 for ACDBE and non-ACDBEs.

3. ACDBE Annual Report of Percentages of ACDBEs in Various Categories (New Requirement)

CFR Section: 49 CFR 23.27(d).
Respondents: 49 state departments of transportation, District of Columbia, and Puerto Rico.
Number of respondents: 51.
Frequency: once each year.
Number of responses: 51.
Hours per response: 3.2.
Wage rate: $72.35/hour.
Total annual burden: 161.6 hours and $11,807.52.

4. Counting of ACDBE Participation Following Eligibility Removal (§ 23.55) (New Requirement)

Respondents: ACDBE firms.
Number of respondents: 1,233.
Frequency: once each year.
Number of responses: 1,233.
Total annual burden: 25,276.5 hours and $1,259,528.

5. Long-Term Exclusive Agreements (§ 23.75) (Modification of Existing Requirement)

Proposed modification: Amend and/or remove LTE requirements for documentation and information that are unclear, not feasible, or pertinent.
Respondents: Recipients of FAA airport development grants.
Number of respondents: 7.
Frequency: once.
Number of responses: 7.
Total annual burden: 35.09 hours and $2,130.23.

6. Personal Net Worth Statement (Modification of Existing Requirement)

Proposed modification: Remove the requirement for firms to report their retirement assets, thus reducing the hours and cost burden of completing the form.
CFR Section: Appendix G of 49 CFR part 26.
Respondents: DBE and ACDBE certification applicants.
Number of respondents: 9,500.
Frequency: once each year.
Number of responses: 9,500.
Hours per response: 8.
Wage rate: There is no applicable wage rate because there is no standardized way in which firms operate and how they pay their employees and/or contractors It is not possible for DOT to contact firms for estimates.
Total annual burden: 76,000 hours.

7. Uniform Certification Application (UCA) (Modification of Existing Requirement)

Proposed modification: Add clarifying instructions and terminology to assist applicants in filling out the application, thereby reducing the hours and cost burdens of completing it.
CFR Section: Appendix F of 49 CFR part 26.
Respondents: DBE and ACDBE certification applicants.
Number of respondents: 9,500.
Frequency: once.
Number of responses: 9,500.
Hours per response: 35.
Wage rate: There is no applicable wage rate because there is no standardized way in which firms operate and how they pay their employees or contractors It is not possible for DOT to contact firms for estimates.
Total annual burden: 332,500 hours.

[45] A ''collection of information'' is defined as ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons.'' 5 CFR 1320.3(c)(1). The activities that constitute the ''burden'' associated with a collection are defined in 5 CFR 1320.3(b)(1) as ''the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency.''

[46] The instruments are the Uniform Report of DBE Awards or Commitments and Payments, Uniform Certification Application, Annual Affidavit of No Change, Personal Net Worth Statement, and Percentages of DBEs in Various Categories.

[47] For part 23 recipient wage rates, the Department calculated the total annual cost burden by multiplying the total annual burden hours (56 hours × 396 respondents) against the fully loaded state government wage rate taken from Bureau of Labor and Statistics' (BLS) estimate of median wages for employees in ''Management Occupations'' (SOC 11–000) working in ''State Government, excluding schools and hospitals'' (NAICS 999200) at *https://www.bls.gov/oes/current/naics4_999200.htm#11-0000.* The wage rate ($44.66/hour) is multiplied by 1.62 to get a fully loaded wage rate (compensation rate) or $72.35 to account for the cost of employer provided benefits. For part 26, recipient staff hourly wage rate is taken from the BLS estimate of an Eligibility Interviewer in Government Programs (OEWS Designation). The wage rate is multiplied by 1.62 to get a fully loaded hourly wage rate of $34.77 to account for the cost of employer provided benefits. For state and local government workers, wages represent 61.9% of total compensation in 2020, therefore the multiplier is 1.62 (1/0.619).

8. Declaration of Eligibility (Currently Titled ''Annual No Change Affidavit'') (Modification of Existing Requirement)

Proposed modification: Eliminate the notarization requirement, thus reducing the hours and cost burden of completing and submitting the form.
CFR Section: 49 CFR 26.83(j).
Respondents: DBE and ACDBE firms.
Number of respondents: 45,525.
Frequency: once each year.
Number of responses: 45,525.
Hours per response: .5 hour (30 minutes).
Wage rate: There is no applicable wage rate because there is no standardized way in which firms operate and how they pay their employees or contractors It is not possible for DOT to contact firms for estimates.
Total annual burden: 22,762 hours.

9. Maintaining Bidders Lists (Modification of Existing Requirement)

Proposed modification: Recipients would obtain additional data sets and enter all bidders list information into a centralized database.
CFR Section: 49 CFR 26.11(c).
Respondents: DOT funding recipients.
Number of respondents: 1,198.
Frequency: 3 times per year.
Number of responses: 3,594.
Hours per response: 8.
Wage rate: $34.77.
Total annual burden: 86,256 hours and $2,999,121.12.

10. Reporting Percentages of DBEs in Various Categories (MAP–21 Data Report) (Modification of Existing Requirement)

Proposed modification: Expand data collection to cover the number of firms denied certification, summarily suspended, or decertified. The data would be disaggregated by ethnicity, gender, and the number of prequalified certified firms in each North American Industry Classification System (NAICS) code.
CFR Section: 49 CFR 26.11(e).
Respondents: state departments of transportation, District of Columbia, and Puerto Rico.
Number of respondents: 52.
Frequency: once per year.
Number of responses: 52.
Hours per response: 315.
Wage rate: $34.77.
Total annual burden: 16,380 hours and $569,532.60.

11. Updating and Maintaining State Directories of DBEs and ACDBEs (Modification of Existing Requirement)

Proposed modifications: Eliminate the requirement of publishing printed directories. Add additional information fields to the directories.
CFR Section: 49 CFR 26.31 and 26.81(g).
Respondents: Certifying agencies of DOT funding recipients.
Number of respondents: 132.
Frequency: Each respondent does this 12 times each year.
Number of responses: 1,584.
Hours per response: 2.
Wage rate: $34.77.
Total annual burden: 38,016 hours and $1,321,816.32.

12. DBE Performance Plan (New Requirement)

CFR Section: 49 CFR 26.53(e).
Respondents: Recipients of FHWA funds that let design-build contracts.
Number of respondents: 50.
Frequency: 15 times each year.
Number of responses: 750.
Hours per response: 3.
Wage rate: $34.77.
Total annual burden: 33,750 hours and $1,173,487.50.

13. Mailing and Maintaining Copies of Notices of Summary Suspension (Modification of Existing Requirement)

Proposed modification: Remove the requirement for sending notices of summary suspension by mail and allow respondents to send the notices by email.
CFR Section: 49 CFR 26.88.
Respondents: Certifying agencies of DOT funding recipients.
Number of respondents: 132.
Frequency: 5 times each year.
Number of responses: 660.
Hours per response: .25 hours (15 minutes).
Wage rate: $34.77.
Total annual burden: 165 hours and $5,737.05.

14. Uniform Report of DBE Awards or Commitments and Payments (Modification of Existing Requirement)

Proposed modification: Recipients would fill out 10 additional data fields.
CFR Section: 49 CFR 26.11(a).
Respondents: DOT funding recipients.
Number of respondents: 1,198.
Frequency: once each year.
Number of responses: 1,198.
Hours per response: 317.
Wage rate: $34.77.
Total annual burden: 377,370 hours and $11,022.

Pursuant to 44 U.S.C 3506(c)(2)(B), DOT solicits comments about the accuracy of the hours and costs burden estimates. Comments should be submitted to Walter Bohorfoush, Supervisory Information Technology Specialist, Office of the Chief Information Officer, Department of Transportation, at 202–366–0560 or *Walter.Bohorfoush@dot.gov* or to Joseph Nye, Office of the Secretary Desk Officer, Office of Management and Budget, at *Joseph.B.Nye@omb.eop.gov.* The Office of Management and Budget (OMB) is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 49 CFR Parts 23 and 26

Administrative practice and procedure, Airports, Civil rights, Government contracts, Grant programs—transportation, Mass transportation, Minority businesses, Reporting and recordkeeping requirements.

Issued on July 5, 2022, in Washington, DC.

Peter Paul Montgomery Buttigieg,
Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation proposes to amend 49 CFR parts 23 and 26 as follows:

PART 23—PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

■ 1. Revise the authority citation for part 23 to read as follows:

Authority: 49 U.S.C. 47107; 42 U.S.C. 2000d; 49 U.S.C. 322; E.O. 12138, 44 FR 29637, 3 CFR, 1979 Comp., p. 393.

■ 2. In part 23, remove ''a ACDBE'' wherever the term appears and add in its place ''an ACDBE''.
■ 3. Amend § 23.1 by:
■ a. In paragraph (e), removing the word ''and'' at the end of the paragraph.
■ b. Redesignating paragraph (f) as paragraph (h).
■ c. Adding new paragraph (f) and paragraph (g).

The additions read as follows:

§ 23.1 What are the objectives of this part?

* * * * *

(f) To promote the use of ACDBEs in all types of concessions activities at airports receiving DOT financial assistance;

(g) To assist the development of firms that can compete successfully in the

marketplace outside the ACDBE program; and

* * * * *

■ 4. Amend § 23.3 by:

■ a. Removing ''13 CFR 121.103(f)'' in the definition of *Affiliation* and adding in its place ''13 CFR 121.103(h).''

■ b. Removing the phrase ''a concession that'' from the introductory text in the definition of *Airport Concession Disadvantaged Business Enterprise (ACDBE)* and adding in its place ''a firm seeking to operate as a concession that.''

■ c. Adding the definitions of *Alaska Native* and *Assets* in alphabetical order.

■ d. In the definition of *Concession:*

■ i. In the introductory text, adding the phrase ''that serve the traveling public'' after ''the types of for-profit businesses.''

■ ii. Adding the phrase ''traveling'' after ''sale of consumer goods or services to the'' in paragraph (1).

■ e. Adding the definitions of *Contingent liability* and *Days* in alphabetical order.

■ f. Removing the definition *Department (DOT)* and adding the definition *Department* or *DOT* in its place.

■ g. Adding the definition of *Home State* in alphabetical order.

■ h. Removing the phrase ''or registered domestic partner'' from the definition of *Immediate family member* and adding in its place ''and domestic partner and civil unions recognized under State law.''

■ i. Adding the definitions of *Liabilities* and *Operating Administration* or *OA* in alphabetical order.

■ j. Revising the definitions of *Part 26* and *Personal net worth.*

■ k. Removing the definition of *Primary recipient.*

■ l. Moving the definition of *Recipient* into alphabetical order and revising the definition.

■ m. Revising the introductory text and paragraphs (1) and (2)(iii) and (iv) in the definition of *Socially and economically disadvantaged individual.*

■ n. Adding the definitions of *Subconcession* or *subcontractor* and *Sublease* in alphabetical order.

The revisions and additions read as follows:

§ 23.3 What do the terms used in this part mean?

* * * * *

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

* * * * *

Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, individual retirement account (IRA) or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

* * * * *

Contingent liability means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant firm, legal claims and judgments, and provisions for Federal income tax.

Days means calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

Department or *DOT* means the U.S. Department of Transportation, including the Office of the Secretary.

* * * * *

Home State means the state in which an ACDBE firm or applicant for ACDBE certification maintains its principal place of business.

* * * * *

Liabilities mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

* * * * *

Operating Administration or *OA* means any of the following: Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The ''Administrator'' of an OA includes his or her designees.

Part 26 means 49 CFR part 26, DOT's Disadvantaged Business Enterprise Program regulation.

Personal net worth or *PNW* has the same meaning the term has in 49 CFR part 26.

* * * * *

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

* * * * *

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a certain group and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control. Socially and economically disadvantaged individuals include:

(1) Any individual determined by a recipient to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.

(2) * * *

(iii) ''Native Americans,'' which includes persons who are enrolled members of a federally or state recognized Indian tribe, Alaska Natives, or Native Hawaiians.

(iv) ''Asian-Pacific Americans,'' which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong.

Subconcession or *subcontractor* means a firm that has a sublease or other agreement with a prime concessionaire, rather than with the airport itself, to operate a concession at the airport.

Sublease means a lease by a lessee (tenant) to a sublessee (subtenant). Sublease is an example of a direct ownership arrangement in which the concessionaire operates a concession location at the airport. Under a sublease arrangement, the subtenant is responsible for the full operation of the concession and all requirements applicable to that concession under the master lease including proportionate share of the rent, and owns and controls the concession.

* * * * *

§ 23.13 [Amended]

■ 5. Amend § 23.13 by:

■ a. In paragraph (b), removing ''of'' that appears after the word ''interpretations.''

■ b. In paragraph (d) introductory text, removing the phrase ''are for the purpose of authorizing'' and adding in its place the word ''authorize.''

§ 23.21 [Amended]

■ 6. Amend § 23.21 by:

■ a. In paragraph (a) introductory text, removing the word ''revisesd'' and add in its place the word ''revised.''

■ b. In paragraph (b), removing the term ''a DBE concessions'' and add in its place ''an ACDBE''.

■ c. In the second sentence of paragraph (c), removing the phrase ''If you do so,'' and add in its place the word ''However,''.

■ 7. Amend § 23.25 by:

■ a. In paragraph (d)(3), removing the words ''so as'' after the word ''activities'' and adding a semicolon at the end of the sentence.

■ b. Revising paragraphs (e) and (f).

The revisions read as follows:

§ 23.25 What measures must recipients include in their ACDBE programs to ensure nondiscriminatory participation of ACDBEs in concessions?

* * * * *

(e) Your ACDBE program must also provide for the use of race-conscious measures when race-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal. The following are examples of race-conscious measures you can implement:

(1) Establishing concession-specific goals for particular concession opportunities.

(i) In setting concession-specific goals for concession opportunities other than car rental, you are required to explore, to the maximum extent practicable, all available options to set goals that concessionaires can meet through direct ownership arrangements. A concession-specific goal for any concession other than car rental may be based on purchases or leases of goods and services only when the analysis for the relative availability of ACDBEs and all relevant evidence reasonably supports that proposition.

(ii) In setting car rental concession-specific goals, you cannot require a car rental company to change its corporate structure to provide for participation via direct ownership arrangement. When your overall goal for car rental concessions is based on purchases or leases of goods and services, you are not required to explore options for direct ownership arrangements prior to setting a car rental concession-specific goal based on purchases or leases of goods and services.

(iii) If the objective of the concession-specific goal is to obtain ACDBE participation through a direct ownership arrangement with an ACDBE, calculate the goal as a percentage of the total estimated annual gross receipts from the concession.

(iv) If the goal applies to purchases or leases of goods and services, calculate the goal by dividing the estimated dollar value of such purchases or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire.

(v) To be eligible to be awarded the concession, competitors must make good faith efforts to meet this goal. A competitor may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so.

(vi) The administrative procedures applicable to contract goals in part 26, §§ 26.51 through 26.53, apply with respect to concession-specific goals.

(2) Negotiation with a potential concessionaire to include ACDBE participation, through direct ownership arrangements or measures, in the operation of the non-car rental concession.

(3) With the prior approval of FAA, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

(f) Your ACDBE program must require businesses subject to car rental and non-car rental ACDBE goals at the airport to make good faith efforts to meet goals when set pursuant to paragraph (e) of this section.

* * * * *

■ 8. Add § 23.26 to read as follows:

§ 23.26 Fostering small business participation.

(a) Your ACDBE program must include an element to provide for the structuring of concession opportunities to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of concession opportunities that may preclude small business participation in solicitations.

(b) This element must be submitted to the FAA for approval as a part of your ACDBE program. As part of this program element you may include, but are not limited to including, the following strategies:

(1) Establish a race-neutral small business set-aside for certain concession opportunities. Such a strategy would include the rationale for selecting small business set-aside concession opportunities which may include consideration of size and availability of small businesses to operate the concession.

(2) Consider the concession opportunities available through all concession models, including but not limited to direct leasing, third party developer, and leasing manager.

(3) On concession opportunities that do not include ACDBE contract goals, require prime concessionaires to provide subleasing opportunities of a size that small businesses, including ACDBEs, can reasonably operate.

(4) Identify alternative concession contracting approaches to facilitate the ability of small businesses, including ACDBEs, to compete for and obtain direct leasing opportunities.

(c) This element should include an objective, definition of small business, verification process, monitoring plan, implementation timeline, and required assurances.

(d) A state, local or other program, in which eligibility requires satisfaction of race/gender or other criteria in addition to business size, may not be used to comply with the requirements of this part.

(e) This element must not include local geographic preferences per § 23.79.

(f) You must submit an annual report on small business participation obtained through the use of your small business element. This report must be submitted in a format acceptable to the FAA based on a schedule established and posted to the agency's website, available at *https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program*.

(g) You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your ACDBE program.

■ 9. Amend § 23.27 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 23.27 What information does a recipient have to retain and report about implementation of its ACDBE program?

* * * * *

(b) You must submit an annual report on ACDBE participation to the FAA by March 1 following the end of each fiscal year. This report must be submitted in the format acceptable to the FAA and contain all of the information described in the Uniform Report of ACDBE Participation.

(c) You must create and maintain active participants list information as

described in paragraph (c)(2) of this section and enter it into a system designated by the FAA.

(1) The purpose of this active participants list is to ensure that you have the most accurate data possible about the universe of ACDBE and non-ACDBEs who seek work in your airport concessions program as a tool to help you set your overall goals and, to provide the Department with data for evaluating the extent to which the objectives of § 23.1 are being achieved.

(2) You must obtain the following active participant list information about ACDBE and non-ACDBEs who seek to work on each of your concession opportunities.

(i) Firm name;

(ii) Firm address including zip code;

(iii) Firm status as an ACDBE or non-ACDBE;

(iv) Race and gender information for the firm's majority owner;

(v) NAICS code applicable to each scope of work the firm sought to perform in its proposal;

(vi) Age of the firm; and

(vii) The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (*e.g.,* less than $1 million; $1–3 million; $3–6 million; $6–10 million, etc.) rather than requesting an exact figure from the firm.

(3) You must collect the data from all active participants for your concession opportunities by requiring the information in paragraph (c)(2) of this section to be submitted with their proposals or initial responses to negotiated procurements. You must enter this data in FAA's designated system no later than December 1 following the fiscal year in which the relevant concession opportunity was awarded.

(d) The state department of transportation in each Unified Certification Program (UCP) established pursuant to 49 CFR 26.81 must report to DOT's Departmental Office of Civil Rights, by January 1st each year, the information in the UCP directory:

(1) Number and percentage of in-state and out-of-state ACDBE certifications for socially and economically disadvantaged by gender and ethnicity (Black American, Asian-Pacific American, Native American, Hispanic American, Subcontinent-Asian Americans, and non-minority);

(2) Number of ACDBE certification applications received from in-state and out-of-state firms and the number found eligible and ineligible;

(3) Number of in-state and out-of-state ACDBEs decertified and/or summarily suspended;

(4) Number of in-state and out-of-state ACDBE applications received for an individualized determination of social and economic disadvantage status; and

(5) Number of in-state and out-of-state ACDBEs whose owner(s) made an individualized showing of social and economic disadvantaged status.

§ 23.31 [Amended]

■ 10. Amend § 23.31 by removing paragraph (c).

■ 11. Revise § 23.33 to read as follows:

§ 23.33 What size standards do recipients use to determine the eligibility of applicants and ACDBEs?

(a) As a recipient, you must, except as provided in paragraph (b) of this section, treat a firm as a small business eligible to be certified as an ACDBE if the gross receipts of the applicant firm and its affiliates, calculated in accordance with 13 CFR 121.104 averaged over the firm's previous five fiscal years, do not exceed $56.42 million.

(b) The following types of businesses have size standards that differ from the standard set forth in paragraph (a) of this section:

(1) *Banks and financial institutions.* $1 billion in assets;

(2) *Passenger car rental companies.* $75.23 million average annual gross receipts over the firm's previous five fiscal years; and

(3) *New car dealers.* 350 employees.

(c) For size purposes, gross receipts (as defined in 13 CFR 121.104(a)), of affiliates should be included in a manner consistent with 13 CFR 121.104(d), except in the context of joint ventures. For gross receipts attributable to joint venture partners, a firm must include in its gross receipts its proportionate share of joint venture receipts, unless the proportionate share already is accounted for in receipts reflecting transactions between the firm and its joint ventures (*e.g.,* subcontracts from a joint venture entity to joint venture partners).

■ 12. Revise § 23.35 to read as follows:

§ 23.35 What is the personal net worth (PNW) limit for disadvantaged owners of ACDBEs?

The PNW limit used in determining eligibility for purposes of this part is $1.60 million. Any individual who has a PNW exceeding this amount is not a socially and economically disadvantaged individual for purposes of this part, even if the individual is a member of a group otherwise presumed to be disadvantaged.

§ 23.37 [Amended]

■ 13. Amend § 23.37 in the second sentence of paragraph (b) by removing the phrase ''does not do work relevant to the airport's concessions program'' and adding the phrase ''does not perform work or provide services relevant to the airport's concessions program'' in its place.

■ 14. Revise § 23.39 to read as follows:

§ 23.39 What are other ACDBE certification requirements?

(a) The provisions of 49 CFR 26.83(c)(1) do not apply to certifications for purposes of this part. Instead, in determining whether a firm is an eligible ACDBE, you must take the following steps:

(1) Perform an on-site visit, virtually or in person, to the firm's principal place of business. You must obtain the résumés or work histories of the principal owners of the firm and personally interview these individuals. You must interview the principal officers and review their résumés and/or work histories. You may interview key personnel of the firm if necessary. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area;

(2) Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, articles of incorporation/organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and state-issued certificates of good standing;

(3) Analyze the bonding and financial capacity of the firm; lease and loan agreements; and bank account signature cards;

(4) Determine the work history of the firm, including any concession contracts or other contracts it may have received; and payroll records;

(5) Obtain or compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive;

(6) Obtain a statement from the firm of the type(s) of concession(s) it prefers to operate or the type(s) of other contract(s) it prefers to perform;

(7) Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 5 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service; and

(8) Require applicants for ACDBE certification to complete and submit an appropriate application form, except as otherwise provided in 49 CFR 26.85.

(b) In reviewing the Declaration of Eligibility required by 49 CFR 26.83(j), you must ensure that the ACDBE applicant provides documentation that it meets the applicable size standard in § 23.33.

(c) For purposes of this part, the term *prime contractor* in 49 CFR 26.87(j) includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient.

(d) With respect to firms owned by Alaska Native Corporations (ANCs), the provisions of 49 CFR 26.63(c)(2) do not apply. The eligibility of ANC-owned firms for purposes of this part is governed by § 26.63(c)(1).

(e) You must use the Uniform Certification Application found in part 26 without change. However, you may provide in your ACDBE program, with the written approval of the concerned Operating Administration, for supplementing the form by requesting specified additional information consistent with this part. In the same space available in section 1(A) of the form, the applicant must state that it is applying for certification as an ACDBE and complete all of section 5.

(f) Car rental companies and private terminal owners or lessees are not authorized to certify firms as ACDBEs. As a car rental company or private terminal owner or lessee, you must obtain ACDBE participation from firms which a recipient or UCPs have certified as ACDBEs.

(g) You are not required to certify an applicant firm if the firm intends to perform activities exclusively related to the renovation, repair, or construction of a concession facility (sometimes referred to as the ''build-out'') for which participation cannot be counted toward an ACDBE goal.

■ 15. Revise § 23.41 to read as follows:

§ 23.41 What is the basic overall goal requirement for recipients?

(a) If you are a recipient who must implement an ACDBE program, you must establish two separate overall ACDBE goals. The first is for car rentals and the second is for concessions other than car rentals.

(b) If your annual car rental concession revenues, averaged over the three-years preceding the date on which you are required to submit overall goals, do not exceed $200,000, you are not required to submit a car rental overall goal. If your annual revenues for concessions other than car rentals, averaged over the three years preceding the date on which you are required to submit overall goals, do not exceed $200,000, you are not required to submit a non-car rental overall goal.

(c) Each overall goal must cover a three-year period. You must review your goals annually to make sure they continue to fit your circumstances appropriately. You must report to the FAA any significant adjustments that you make to your goal before your next scheduled submission.

(d) Your goals established under this part must provide for participation by all DBEs and may not be subdivided into group-specific goals.

(e) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive FAA financial assistance.

(f) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive FAA financial assistance.

■ 16. Amend § 23.43 by adding paragraph (c) as to read follows:

§ 23.43 What are the consultation requirements in the development of recipients' overall goals?

* * * * *

(c) The requirements of this section do not apply if no opportunities for new concession agreements will become available during the goal period. However, recipients must take appropriate outreach steps to encourage available ACDBEs to participate as concessionaires whenever there is a concession opportunity.

■ 17. Amend § 23.45 by:

■ a. Revising the second sentence of paragraph (a) introductory text.

■ b. Removing paragraphs (a)(1) through (3).

■ c. Removing the word ''new'' in paragraph (b).

■ d. Removing the words ''on you'' in paragraph (h) in the last sentence.

The revision reads as follows:

§ 23.45 What are the requirements for submitting overall goal information to the FAA?

(a) * * * Your overall goals meeting the requirements of this subpart are due based on a schedule established by the FAA and posted on the FAA's website.

* * * * *

■ 18. Amend § 23.47 by revising paragraph (a) to read as follows:

§ 23.47 What is the base for a recipient's goal for concessions other than car rentals?

(a) When setting your overall goal you must evaluate all available opportunities for participation that can be obtained, to the maximum extent practicable, through direct ownership arrangements. You may use an alternative method as allowed by § 23.51(c)(5) for the portion of your overall goal for circumstances where there is no relative availability for direct ownership participation by ACDBEs in a particular concession opportunity.

* * * * *

§ 23.51 [Amended]

■ 19. Amend § 23.51 in paragraph (c)(1) by removing the hyperlink ''*www.census.gov/epcd/cbp/view/cbpview.html*'' and adding in its place the hyperlink ''*https://www.census.gov/programs-surveys/cbp.html.*''

■ 20. Amend § 23.55 by:

■ a. In paragraphs (e) and (h)(1) and (2), removing the phrase ''the entire amount'' and adding ''100 percent'' in its place.

■ b. Revising paragraph (j).

The revision reads as follows:

§ 23.55 How do recipients count ACDBE participation toward goals for items other than car rentals?

* * * * *

(j) When an ACDBE is decertified because one or more of its disadvantaged owners exceed the PNW cap or the firm exceeds the business size standards of this part during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement. However, you must verify that the firm in all other respects remains an eligible ACDBE and you must not count the concessionaire's participation toward ACDBE goals beyond the termination date for the concession agreement in effect at the time of the decertification (*e.g.,* in a case where the agreement is renewed or extended, or an option for continued participation beyond the current term of the agreement is exercised).

(1) The firm must inform the recipient in writing of any change in circumstances affecting its ability to meet ownership or control requirements of subpart C of this part or any material

change. Reporting must be made as provided in 49 CFR 26.83(i).

(2) The firm must provide to the recipient, annually on December 1, a Declaration of Eligibility, affirming that there have been no changes in the firm's circumstances affecting its ability to meet ownership or control requirements of subpart C of this part or any other material changes, other than changes regarding the firm's business size or the owner's personal net worth.

* * * * *

■ 21. Amend § 23.57 by revising the first sentence of paragraph (b)(3)(i) to read as follows:

§ 23.57 What happens if a recipient falls short of meeting its overall goals?

* * * * *

(b) * * *

(3) * * *

(i) If you are a CORE 30 airport or other airport designated by the FAA, you must submit, by April 1, the analysis and corrective actions developed under paragraphs (b)(1) and (2) of this section to the FAA for approval. * * *

* * * * *

§ 23.59 [Amended]

■ 22. Amend § 23.59 in paragraph (b) by removing the word ''DBEs'' and adding ''ACDBEs'' in its place.

§ 23.71 [Amended]

■ 23. Amend § 23.71 by removing the first sentence.

■ 24. Revise § 23.75 to read as follows:

§ 23.75 Can recipients enter into long-term, exclusive agreements with concessionaires?

(a) Except as provided in paragraph (b) of this section, you must not enter into long-term, exclusive agreements for concessions.

(1) For purposes of this section, a long-term agreement is one having a term longer than five years including any combination of base term and options to extend the term of the agreement, if the effect is a term of more than five years.

(2) For purposes of this section, an exclusive agreement is one having a type of business activity that is conducted solely by a single business entity on the entire airport, irrespective of ACDBE participation.

(b) You may enter into a long-term, exclusive concession agreement only under the following conditions:

(1) Special local circumstances exist that make it important to enter such agreement; and

(2) The responsible FAA regional office approves your plan for meeting the standards of paragraph (c) of this section.

(c) In order to obtain FAA approval of a long-term-exclusive concession agreement, you must submit the following information to the FAA regional office, the items in paragraphs (c)(1) through (3) of this section must be submitted at least 90 days before the solicitation is released and items in paragraphs (c)(4) through (7) of this section must be submitted at least 45 days before contract award:

(1) A description of the special local circumstances that warrant a long-term, exclusive agreement.

(2) A copy of the solicitation.

(3) ACDBE contract goal analysis developed in accordance with this part.

(4) Documentation that ACDBE participants are certified in the appropriate NAICS code in order for the participation to count towards ACDBE goals.

(5) A general description of the type of business or businesses to be operated by the ACDBE, including location and concept of the ACDBE operation.

(6) Information on the investment required on the part of the ACDBE and any unusual management or financial arrangements between the prime concessionaire and ACDBE.

(7) Final long-term-exclusive concession agreement, subleasing or other agreements.

§ 23.77 [Amended]

■ 25. Amend § 23.77 in paragraph (b) by removing the term ''disadvantaged business enterprise'' and adding in its place ''Disadvantaged Business Enterprise''.

■ 26. Revise § 23.79 to read as follows:

§ 23.79 Does this part permit recipients to use local geographic preferences?

No. As a recipient you must not use a local geographic preference. For purposes of this section, a local geographic preference is any requirement that gives a concessionaire located in one place (*e.g.,* your local area) an advantage over concessionaires from other places in obtaining business as, or with, a concession at your airport.

Appendix A to Part 23 [Removed]

■ 27. Remove appendix A to part 23.

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

■ 28. The authority citation for part 26 is revised to read as follows:

Authority: 23 U.S.C. 304 and 324; 42 U.S.C. 2000d, *et seq.;* 49 U.S.C. 47113, 47123; Sec. 1101(b), Pub. L. 114–94, 129 Stat. 1312, 1324 (23 U.S.C. 101 note); Sec. 150, Pub. L. 115–254, 132 Stat. 3215 (23 U.S.C. 101 note); Pub. L. 117–58, 135 Stat. 429 (23 U.S.C. 101 note).

■ 29. In part 26, remove the word ''actually'' wherever it appears.

§ 26.1 [Amended]

■ 30. Amend § 26.1 in paragraph (f) by removing ''federally-assisted'' and add in its place ''federally assisted''.

■ 31. Revise § 26.3 to read as follows:

§ 26.3 To whom does this part apply?

(a) If you are a recipient of any of the following types of funds, this part applies to you:

(1) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat. 107. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, 119 Stat. 1144; Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L. 112–141, 126 Stat. 405; Titles I, II, III, and VI of the Fixing America's Surface Transportation Act (FAST Act) Pub. L. 114–94, 23 U.S.C. 204; section 403 of Title 23, U.S. Code, and Division C of the Bipartisan Infrastructure Law (BIL), Pub. L. 117–58.

(2) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102–240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA–21, Pub. L. 105–178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, 119 Stat. 1144; Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L. 112–141, 126 Stat. 405; Titles I, II, III, and VI of the Fixing America's Surface Transportation Act (FAST Act) Pub. L. 114–94, and Division C of the Bipartisan Infrastructure Law (BIL), Pub. L. 117–58.

(3) Airport funds authorized by 49 U.S.C. 47101, *et seq.*

(4) [Reserved]

(b) [Reserved]

(c) If you are letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Mariana Islands, this part does not apply to the contract.

(d) If you are letting a contract in which DOT financial assistance does

not participate, this part does not apply to the contract.

■ 32. Amend § 26.5 by:

■ a. Revising the definitions of *Alaska Native* and *Department* or *DOT.*

■ b. Removing the definition *Disadvantaged business enterprise or DBE* and adding the definition *Disadvantaged Business Enterprise or DBE* in its place.

■ c. Removing the definition *Indian tribe* and adding the definition *Indian tribe* or *Native American tribe* in its place.

■ d. Removing the definition *Personal net worth* and adding the definition *Personal net worth* or *PNW* in its place.

■ e. Revising the definitions of *Primary industry classification, Principal place of business, Recipient,* and *Secretary.*

■ f. In the definition of *Socially and economically disadvantaged individual:*

■ g. In the introductory text, removing the phrase ''as a members of groups'' and adding in its place the phrase ''as a member of a group''.

■ ii. In paragraph (2)(iv), removing the locations ''Republic of the Northern Marianas Islands'' and ''Kirbati'' and adding in their place the locations ''Republic of the Northern Mariana Islands'' and ''Kiribati'', respectively.

■ iii. In paragraph (2)(v), removing the location ''the Maldives Islands'' and adding in its place the location ''Maldives''.

■ f. Adding the definitions of *Transit vehicle* and *Transit vehicle dealership* in alphabetical order.

■ g. Removing the definition of *Transit vehicle manufacturer* and adding in its place the definition *Transit vehicle manufacturer (TVM).*

■ h. Adding the definition of *Unsworn declaration* in alphabetical order.

The revisions and additions read as follows:

§ 26.5 Definitions

* * * * *

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

* * * * *

Department or *DOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Departmental Office of Civil Rights, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged Business Enterprise or *DBE* means a for-profit small business concern engaged in transportation-related industries:

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

* * * * *

Indian tribe or *Native American tribe* means any federally or state-recognized tribe, band, nation, or other organized group of Indians (Native Americans), or an ANC.

* * * * *

Personal net worth or *PNW* means the net value of an individual's reportable assets and liabilities, per the calculation rules in § 26.68.

Primary industry classification means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States which is available online on the U.S. Census Bureau website: *www.census.gov/naics/.*

* * * * *

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business. The term does not include construction trailers or other temporary construction sites.

* * * * *

Recipient means any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or that has applied for such assistance.

Secretary means DOT's Secretary of Transportation or the Secretary's designee.

* * * * *

Transit vehicle means a vehicle manufactured by a TVM. A vehicle manufactured by a non-TVM is not considered a transit vehicle for purposes of this part, notwithstanding the vehicle's ultimate use.

Transit vehicle dealership means a business that is primarily engaged in selling transit vehicles but that does not manufacture vehicles itself.

Transit vehicle manufacturer (TVM) means any manufacturer whose primary business purpose is to manufacture vehicles built for mass transportation. Such vehicles include, but are not limited to buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Businesses that perform retrofitting or post-production alterations to vehicles so that such vehicles may be used for public transportation purposes are also considered TVMs. Businesses that manufacture, mass-produce, or distribute vehicles primarily for personal use are not considered TVMs.

* * * * *

Unsworn declaration means an unsworn statement, dated and in writing, subscribed as true under penalty of perjury.

* * * * *

■ 33. Revise § 26.11 to read as follows:

§ 26.11 What records do recipients keep and report?

(a) You must submit a report on DBE participation to the concerned Operating Administration containing all the information described in the Uniform Report to this part. This report must be submitted at the intervals required by, and in the format acceptable to, the concerned Operating Administration.

(b) You must continue to provide data about your DBE program to the Department as directed by DOT operating administrations.

(c) You must obtain bidders list information as described in paragraph (c)(2) of this section and enter it into a system designated by the Department.

(1) The purposes of this bidders list information is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on your federally assisted contracts for use in helping you set your overall goals; and, to provide the Department with data for evaluating the extent to which the objectives of § 26.1 are being achieved.

(2) You must obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of your federally assisted contracts:

(i) Firm name;

(ii) Firm address including zip code;

(iii) Firm's status as a DBE or non-DBE;

(iv) Race and gender information for the firm's majority owner;

(v) NAICS code applicable to each scope of work the firm sought to perform in its bid;

(vi) Age of the firm; and

(vii) The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (*e.g.,* less than $1 million; $1–3 million; $3–6 million; $6–10 million; etc.) rather than requesting an exact figure from the firm.

(3) You must collect the data from all bidders for your federally assisted contracts by requiring the information in paragraph (c)(2) of this section to be submitted with their bids or initial responses to negotiated procurements. You must enter this data in the Department's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded. In the case of a ''design-build'' contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to § 26.53(e), the data must be entered no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

(d) You must maintain records documenting a firm's compliance with the requirements of this part. At a minimum, you must keep a complete application package for each certified firm and all Declarations of Eligibility, change notices, and on-site visit reports. These records must be retained in accordance with applicable record retention requirements for the recipient's financial assistance agreement. Other certification or compliance related records must be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the recipient's financial assistance agreement, whichever is longer.

(e) The department of transportation in each Unified Certification Program (UCP) established pursuant to § 26.81 must report to DOT's Departmental Office of Civil Rights each year, the following information in the UCP directory:

(1) The number and percentage of in-state and out-of-state DBE and Airport Concession Disadvantaged Business Enterprise (ACDBE) certifications by gender and ethnicity (Black American, Asian-Pacific American, Native American, Hispanic American, Subcontinent-Asian Americans, and non-minority);

(2) The number of DBE certification applications received from in-state and out-of-state firms and the number found eligible and ineligible;

(3) The number of in-state and out-of-state firms decertified and/or summarily suspended;

(4) The number of in-state and out-of-state applications received for an individualized determination of social and economic disadvantage status;

(5) The number of in-state and out-of-state firms certified whose owner(s) made an individualized showing of social and economic disadvantaged status; and

(6) The number of DBEs pre-qualified in their work type by the recipient.

■ 34. Revise the heading for subpart B to read as follows:

Subpart B—Administrative Requirements for DBE Programs for Federally Assisted Contracting

■ 35. Revise § 26.21 to read as follows:

§ 26.21 Who must have a DBE program?

(a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part:

(1) All FHWA primary recipients receiving funds authorized by a statute to which this part applies;

(2) All FTA recipients receiving planning, capital and/or operating assistance must maintain a program locally that includes the requirements of reporting and recordkeeping under § 26.11; contract assurances under § 26.13; policy statement under § 26.23; fostering small business participation under § 26.39; and transit vehicle manufacturers under § 26.49. FTA recipients receiving planning, capital and/or operating assistance to award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds $670,000 in FTA funds in a Federal fiscal year must have a DBE program meeting all the requirements of this part; and

(3) FAA recipients receiving grants for airport planning or development that will award prime contracts the cumulative total value of which exceeds $250,000 in FAA funds in a Federal fiscal year.

(b)(1) You must submit a conforming DBE program to the concerned Operating Administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except goals that are reviewed by the relevant OA).

(2) You do not have to submit regular updates of your DBE program plan if you remain in compliance with this part. However, you must submit significant changes to the relevant OA for approval.

(c) You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your DBE program until all funds from DOT financial assistance have been expended.

■ 36. Amend § 26.29 by:

■ a. Revising paragraph (d).

■ b. Redesignating paragraph (e) as paragraph (g).

■ c. Adding new paragraph (e) and paragraph (f).

The revision and additions read as follows:

§ 26.29 What prompt payment mechanisms must recipients have?

* * * * *

(d) Your DBE program must include the mechanisms you will use for proactive monitoring and oversight of a prime contractor's compliance with subcontractor prompt payment and return of retainage requirements in this part. Reliance on complaints or notifications from subcontractors about a contractor's failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism.

(e) Your DBE program must provide appropriate means to enforce the requirements of this section. These means must be described in your DBE program and should include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(f) Prompt payment and return of retainage requirements in this part also apply to lower-tier subcontractors.

* * * * *

■ 37. Revise § 26.31 to read as follows:

§ 26.31 What information must a UCP include in its DBE/ACDBE directory?

(a) In the directory required under § 26.81(g), you must list all firms eligible to participate as a DBE and/or ACDBE in your program. In the listing for each firm, you must include its business address, business phone number, the types of work the firm has been certified to perform as a DBE and/or ACDBE, and all the following information that the firm chooses to make public:

(1) State licenses held;

(2) Pre-qualifications;

(3) Bonding capacity;

(4) Equipment capability;

(5) Recently completed projects; and

(6) website.

(b) You must list each type of work a DBE and/or ACDBE is eligible to perform by using the most specific NAICS code available to describe each type of work. Pursuant to § 26.81(n)(1) and (3), your directory must allow for NAICS codes to be supplemented with specific descriptions of the type(s) of work the firm performs.

(c) Your directory must permit the public to search and/or filter for DBEs and/or using the following criteria:

(1) Physical location;

(2) NAICS code(s);

(3) Keyword search of work descriptions; or

(4) The information in paragraphs (a)(1) through (6) of this section:

(i) State license(s);

(ii) Pre-qualifications;

(iii) Bonding and maximum bonding capacity;

(iv) Equipment type and number of each equipment type;

(v) Dollar value of largest completed project and keyword search of project descriptions; and

(vi) Firms that have websites.

(d) You must make any changes to your current directory entries by January 1, 2024, or within [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE]. The directory should clearly indicate that the information displayed pursuant to paragraphs (a)(1) through (6) of this section was submitted by the DBE and/or ACDBE and has not been reviewed for accuracy by the members of the UCP.

■ 38. Amend § 26.35 by revising paragraph (b)(2) introductory text to read as follows:

§ 26.35 What role do business development and mentor-protégé programs have in the DBE program?

* * * * *

(b) * * *

(2) In the mentor-protégé relationship, you must:

* * * * *

■ 39. Revise § 26.37 to read as follows:

§ 26.37 What are a recipient's responsibilities for monitoring?

(a) You must implement appropriate mechanisms to ensure compliance with the requirements in this part by all program participants (*e.g.,* applying legal and contract remedies available under Federal, state, and local law). You must set forth these mechanisms in your DBE program.

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to all DBEs at contract award or subsequently, including race- neutral participation, is actually performed by the DBEs to which the work was committed, and such work is counted according to the requirements of § 26.55. This mechanism must include a written verification that you have reviewed contracting records and monitored the work site to ensure the counting of each DBE's participation is consistent with its function on the contract. The monitoring to which this paragraph (b) refers may be conducted in conjunction with monitoring of contract performance for other purposes.

(c) This mechanism must also provide for running tallies of actual DBE attainments toward the overall goal and for each DBE commitment submitted pursuant to meeting a contract goal. Regarding the running tally used to monitor the overall goal, this mechanism must provide a means to compare current DBE attainments to anticipated contract awards for the remainder of the annual reporting period. This mechanism should ensure that contract goals are applied in accordance with § 26.51(d). Regarding the running tally used to monitor the fulfillment of each DBE commitment, this mechanism must provide a means of comparing cumulative payments made to the DBE to the work listed for each. This mechanism should assess whether the commitment will be fulfilled or whether the prime contractor has demonstrated good faith efforts, or should be required to demonstrate good faith efforts, to address any projected shortfall per § 26.53(g).

§ 26.39 [Amended]

■ 40. Amend § 26.39 in paragraph (b) introductory text by removing the phrase ''by February 28, 2012''.

■ 41. Amend § 26.45 by:

■ a. Revising paragraph (a).

■ b. Removing in paragraph (c)(1) the hyperlink ''*www.census.gov/epcd/cbp/view/cbpview.html*'' and adding in its place the hyperlink ''*https://www.census.gov/programs-surveys/cbp.html.*''

■ c. Removing in paragraph (f)(1)(i) the words ''website'' and adding in their place the word ''Web site''.

■ d. Removing in paragraph (f)(3) the text ''incuding'', ''race-consioous'', and ''26.51(c)'' and adding in their places the text ''including'', ''race-conscious'', and ''§ 26.51(c)'', respectively.

The revision reads as follows:

§ 26.45 How do recipients set overall goals?

(a) *General rule.* (1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts.

(2) If you are an FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) $670,000 or less in FTA or $250,000 or less in FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year.

* * * * *

§ 26.47 [Amended]

■ 42. Amend § 26.47 in paragraph (c)(3)(i) by removing the words ''Operational Evolution Partnership Plan'' and adding in their place the term ''CORE 30''.

■ 43. Revise § 26.49 to read as follows:

§ 26.49 What are the requirements for transit vehicle manufactures (TVMs) and for awarding DOT-assisted contracts to TVMs?

(a) If you are an FTA recipient, you must require in your DBE program that each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.

(1) Only those TVMs listed on FTA's list of eligible TVMs, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.

(2) A TVM's failure to follow the requirements of this section and throughout this part will be deemed as non-compliant, which will result in removal from FTA's eligible TVMs list and will become ineligible to bid.

(3) An FTA recipient's failure to comply with the requirements set forth in paragraph (a) of this section may result in formal enforcement action or appropriate sanction as determined by FTA (*e.g.,* FTA declining to participate in the vehicle procurement).

(4) Within 30 days of becoming contractually obligated to procure a transit vehicle, an FTA recipient must report to FTA:

(i) The name of the TVM that was the successful bidder; and

(ii) The Federal share of the contractual commitment at that time.

(5) A contract with a transit vehicle dealership to procure vehicles does not qualify as a contract with a TVM, notwithstanding the manufacturer of the vehicles procured.

(b) If you are a TVM, you must establish and submit to FTA an annual overall percentage goal for DBE participation.

(1) In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying § 26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts on which you will bid during the fiscal year in question, less the portion(s) attributable to the manufacturing process performed entirely by your own forces.

(i) You must consider and include in your base figure all domestic contracting opportunities made available to non-DBEs.

(ii) You must exclude from this base figure funds attributable to work performed outside the United States and its territories, possessions, and commonwealths.

(iii) In establishing an overall goal, you must provide for public participation. This includes consultation with interested parties consistent with § 26.45(g).

(2) The requirements of this part with respect to submission and approval of overall goals apply to you as they do to recipients, except that TVMs set and submit their goals annually and not on a triennial basis.

(c) TVMs must comply with the reporting requirements of § 26.11, including the requirement to submit the Uniform Report of DBE Awards or Commitments and Payments, in order to remain eligible to bid on FTA-assisted transit vehicle procurements.

(d) TVMs must implement all other requirements of this part, except those relating to UCPs and DBE certification procedures.

(e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of the equipment must meet the same requirements (including goal approval by FHWA or FAA) that TVMs must meet in FTA-assisted procurements.

(f) As a recipient you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying with the procedures of this section.

§ 26.51 [Amended]

■ 44. Amend § 26.51 in paragraph (f)(4) by removing the words ''through the use of'' and adding in their place the word ''using.''

■ 45. Amend § 26.53 by revising paragraphs (b)(3)(ii), (e), and (f) to read as follows:

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

* * * * *

(b) * * *

(3) * * *

(ii) Provided that, in a negotiated procurement, such as a procurement for professional services, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the recipient. This paragraph (b)(3)(ii) does not apply to a design-build procurement, which must follow the provisions in paragraph (e) of this section.

* * * * *

(e) In a design-build contracting situation, in which the recipient solicits proposals to design and build a project with minimal-project details at time of letting, the recipient may set a DBE goal that proposers must meet by submitting a DBE Performance Plan (DPP) with the proposal. The DPP replaces the requirement to provide the information required in paragraph (b) of this section that applies to design-bid-build contracts. To be considered responsive, the DPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amount) that the proposer will solicit DBEs to perform. The DPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, the recipient must provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the DPP and schedule. The recipient and the design-builder may agree to make written revisions of the DPP throughout the life of the project, *e.g.,* replacing the type of work items the design builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as design-builder continues to use good faith efforts to meet the goal.

(f)(1)(i) You must require that a prime contractor not terminate a DBE subcontractor or any portion of its work listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm per paragraph (g) of this section) without your prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(ii) You must include in each prime contract a provision stating that:

(A) The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in paragraph (f) of this section; and

(B) Unless your consent is provided under paragraph (f) of this section, the prime contractor must not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

(2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

(3) Good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award. For purposes of this paragraph (f)(3), good cause includes the following circumstances:

(i) The listed DBE subcontractor fails or refuses to execute a written contract;

(ii) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

(iii) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;

(iv) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

(v) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR parts 180, 215, and 1200 or applicable state law;

(vi) You have determined that the listed DBE subcontractor is not a responsible contractor;

(vii) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;

(viii) The listed DBE is ineligible to receive DBE credit for the type of work required;

(ix) A DBE owner dies or becomes disabled with the result that the listed

DBE contractor is unable to complete its work on the contract; and

(x) Other documented good cause that you determine compels the termination of the DBE subcontractor.

(4) Before transmitting to you its request to terminate a DBE subcontractor or any portion of its work, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to you sent concurrently, of its intent to request to terminate and the reason for the proposed request.

(5) The prime contractor's written notice must give the DBE five days to respond, advising you and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract/or portion thereof and why you should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (*e.g.,* safety), you may provide a response period shorter than five days.

(6) In addition to post-award terminations, the provisions of this section apply to pre-award deletions or changes to DBEs or their listed work put forward by offerors in negotiated procurements.

* * * * *

■ 46. Amend § 26.55 by:

■ a. In paragraph (c)(2), removing the words ''in order''.

■ b. In paragraph (c)(3), removing the words ''on the basis of'' and adding in their place the word ''within''.

■ c. Revising paragraph (e).

■ d. In paragraph (f), removing the cross-reference ''§ 26.87(i)'' and adding in its place the cross-reference ''§ 26.87(j)''.

■ e. Revising paragraph (h).

The revisions read as follows:

§ 26.55 How is DBE participation counted toward goals?

* * * * *

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1)(i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies.

(ii) For purposes of paragraph (e)(1) of this section, a manufacturer is a firm that owns (or leases) and operates a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. When a DBE makes minor modifications to the materials, supplies, articles, or equipment, the DBE is not a manufacturer.

(2)(i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies (including transportation costs).

(ii) For purposes of this section, a regular dealer is a firm that owns (or leases) and-operates, a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in sufficient quantities, and regularly sold or leased to the public in the usual course of business.

(iii) Items kept and regularly sold by the DBE are of the ''general character'' when they share the same material characteristics and application as the items specified by the contract.

(iv) You should establish a system to determine that a DBE regular dealer, over time, keeps sufficient quantities and regularly sells the items in question. This system should ensure that each DBE supplier is eligible for 60% credit based on its demonstrated capacity to perform a commercially useful function (CUF) as a regular dealer. This determination is intended to prevent overcounting at the pre-award or subcontract approval stage and is contingent upon the outcome of a final CUF and counting determination.

(A) To be a regular dealer, the firm must be an established business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A DBE supplier performs a CUF as a regular dealer and receives credit for 60% of the cost of materials or supplies (including transportation cost) when all, or the major portion of, the items under a purchase order or subcontract are provided from the DBE's inventory, and when necessary, any minor quantities delivered from and by other sources are of the general character as those provided from the DBE's inventory. Recipients should establish procedures to ensure that preliminary counting determinations at the pre-award/subcontract approval stage include an evaluation of the type and quantity of items the DBE intends to have delivered by other sources.

(B) A DBE may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in paragraph (e)(2)(ii) of this section if the person both owns and operates distribution equipment used to deliver the products. Any supplementing of regular dealers' own distribution equipment must be by a long-term operating lease and not on an ad hoc or contract-by-contract basis. Recipients should establish procedures to make preliminary counting determinations at the pre-award/subcontract approval stage based on the DBE's capacity and intent to comply with the requirement of this paragraph (e)(2)(iv)(B).

(C) A DBE supplier of items that are not typically stocked due to their unique characteristics (*e.g.,* limited shelf life or specialty items) should be considered in the same manner as a regular dealer of bulk items per paragraph (e)(2)(iv)(B) of this section. If the DBE supplier of these items does not own or lease distribution equipment, as descried above, it is not a regular dealer.

(D) Packagers, brokers, manufacturers' representatives, or other persons who arrange, facilitate, or expedite transactions are not regular dealers within the meaning of paragraph (e)(2) of this section.

(3) If the materials or supplies are purchased from a DBE distributor that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question, count 40% of the cost of materials or supplies (including transportation costs). A DBE distributor is an established business that engages in the regular sale or lease of the items specified by the contract and described under a valid distributorship agreement. A DBE distributor performs a CUF when it operates in accordance with the terms of its distributorship agreement; with respect to shipping, the DBE distributor must assume risk for lost or damaged goods. You should review the language in distributorship agreements to determine their validity relevant to each purchase order/subcontract and the risk assumed by the DBE. Where the DBE distributor does not assume risk or, otherwise, does not operate in accordance with its distributorship agreement, counting is limited to fees and commissions.

(4) With respect to materials or supplies purchased from a DBE that is neither a manufacturer, a regular dealer, nor a distributor, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the

materials and supplies themselves, however.

(5) You must determine the amount of credit awarded to a firm for the provisions of materials and supplies (*e.g.,* whether a firm is acting as a regular dealer, distributor, or a transaction facilitator) on a contract-by-contract basis.

(6) The total allowable credit for a prime contractor's expenditures with DBE suppliers (manufacturers, regular dealers, distributors, and transaction facilitators) is limited to 50% of the participation used by a prime contractor to meet a contract goal. Exceptions to this cap for material-intensive projects may be granted on a contract-by-contract basis with prior approval of the appropriate OA.

* * * * *

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the contractor has actually paid the DBE the amount being counted.

■ 47. Revise § 26.61 to read as follows:

§ 26.61 How are burdens of proof allocated in the certification process?

(a) In determining whether to certify a firm as eligible to participate as a DBE, you must apply the standards of this subpart.

(b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence (*i.e.,* more likely than not) that it meets all the certification eligibility requirements in this subpart. In determining whether the firm has met its burden, you must consider all the information in the record, viewed as a whole.

(1) *Exception 1.* In proceedings to decertify a firm, you bear the burden of proving, by a preponderance of the evidence, that the firm is no longer eligible for certification under the rules of this part.

(2) *Exception 2.* If you seek to rebut an individual's claim of presumed social and/or economic disadvantage, you bear the burden of proving, by a preponderance of the evidence, why the individual is not entitled to the presumption of social and economic disadvantage. See § 26.67(c).

■ 48. Revise § 26.63 to read as follows:

§ 26.63 General certification rules.

(a) *General rules.* Except as otherwise provided:

(1) The firm must be for-profit and operational.

(2) Whether a firm performs a commercially useful function is irrelevant to certification eligibility.

(3) Certification cannot be conditioned on state pre-qualification requirements for bidding on contracts.

(4) Entering into a fraudulent transaction is disqualifying per se.

(5) The certifier determines eligibility based on the evidence it has at the time of its decision, not on the basis of historical or outdated information, giving full effect to the ''curative measures'' provisions of this part.

(b) *Indirect ownership.* A firm (*i.e.,* a subsidiary, denoted S) that socially and economically disadvantaged owners (SEDOs) own and control indirectly is eligible, assuming it satisfies the other requirements of this part, only under the following circumstances.

(1) *Look-through.* SEDOs own at least 51 percent of S cumulatively, as shown in the examples following.

(2) *Control.* The same SEDOs control P, and P controls S.

(3) *One tier only.* The SEDOs indirectly own S through a single P and not through, for example, a parent of P (grandparent).

(4) *Examples.* The following examples assume that S and its SEDOs satisfy all other requirements in this part.

Example 1 to paragraph (b)(4). SEDOs own 100 percent of P, and P owns 100% of S. S is eligible for certification.

Example 2 to paragraph (b)(4). Same facts, except P owns 51 percent of S. S is eligible.

Example 3 to paragraph (b)(4). SEDOs own 80 percent of P, and P owns 70 percent of S. S is eligible because SEDOs indirectly own 56 percent of S. The calculation is 80 percent of 70 percent or $.8 \times .7 = .56$.

Example 4 to paragraph (b)(4). SEDOs own and control P, and they own 52 percent of S by operation of this part. However, a non-SEDO controls S. S is ineligible.

Example 5 to paragraph (b)(4). SEDOs own 60 percent of P, and P owns 51 percent of S. S is ineligible because SEDOs own just 31 percent of S.

Example 6 to paragraph (b)(4). P indirectly owns and controls S and has other affiliates. S is eligible only if its gross receipts plus those of all of its affiliates, including those of P, do not exceed the applicable small business size cap. Note that all of P's affiliates are affiliates of S by virtue of P's ownership and/or control of S.

(c) *Indian tribes, NHOs, and ANCs*—(1) *Indian tribes and NHOs.* A firm that is owned by an Indian tribe or Native Hawaiian organization (NHO), rather than by Indians or Native Hawaiians as individuals, is eligible if it meets all other certification requirements in this part. Such a firm must satisfy all requirements of this part.

(2) *Alaska Native Corporations (ANCs).* (i) Notwithstanding any other provisions of this subpart, a subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all the following requirements:

(A) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;

(B) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

(C) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

(ii) As a certifier to whom an ANC-related entity applies for certification, you do not use the DOT Uniform Certified Application. You must obtain from the firm documentation sufficient to demonstrate that the entity meets the requirements of paragraph (c)(2)(i) of this section. You must also obtain sufficient information about the firm to allow you to administer your program (*e.g.,* information that would appear in your UCP directory).

(iii) If an ANC-related firm does not meet all the conditions of paragraph (c)(2)(i) of this section, then it must meet the requirements of paragraph (c)(1) of this section in order to be certified.

■ 49. Revise § 26.65 to read as follows:

§ 26.65 What rules govern business size determinations?

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. You must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts, including the primary industry classification of the applicant. A firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined in 13 CFR 121.104, over the firm's previous

five fiscal years, in excess of the applicable SBA size standard(s).

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE for the purposes of FHWA and FTA-assisted work in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined in 13 CFR 121.104, over the firm's previous three fiscal years, in excess of $28.48 million (as of March 1, 2022). The Department will adjust this amount for inflation on an annual basis. The adjusted amount will be published on the Department's website in subsequent years.

■ 50. Revise § 26.67 to read as follows:

§ 26.67 What rules determine social and economic disadvantage?

(a) *Group membership*—(1) *General rule.* Citizens of the United States (or lawfully admitted permanent residents) who are women, Black American, Hispanic American, Native American, Asian Pacific American, Subcontinent Asian American, or other minorities found to be disadvantaged by the Small Business Administration (SBA), are rebuttably presumed to be socially and economically disadvantaged.

(2) *Evidence of group membership.* To claim group membership, a firm owner must indicate on the Declaration of Eligibility (DOE), found in the Uniform Certification Application (UCA), in which of the group(s) in paragraph (a)(1) of this section the owner is a member and submit the signed and sworn DOE with the applicant firm's UCA. The DOE is the only evidence of group membership an owner must provide with the UCA.

(3) *Questioning group membership.* You may not question an individual's claim of group membership as a matter of course. You must not impose a disproportionate burden on members of any particular group. Imposing a disproportionate burden on members of a particular group could violate Title VI of the Civil Rights Act of 1964, paragraph (b) of this section, and/or 49 CFR part 21.

(i) If you have a well-founded reason(s) to question an individual's claim of membership in a group in paragraph (a)(1) of this section, you must email the individual a written explanation of your reason(s), using the email address for the firm or individual provided in the UCA (for applicants) or the most recent you have on file (for certified firms). The individual bears the burden of proving, by a preponderance of the evidence, that the individual is a member of the group in question.

(ii) Your written explanation must meet all the following criteria:

(A) Specifically describe the evidence that forms the basis for your well-founded reason(s).

(B) Instruct the individual to submit evidence demonstrating that the individual has held herself/himself/themself/themselves out publicly as a member of the group for at least 5 years prior to applying for DBE certification, and that the relevant community considers the individual a member. You may not require the individual to provide evidence beyond that related to group membership.

(iii) The owner must email you the evidence described in paragraph (a)(3)(ii)(B) of this section no later than 15 days of your written explanation. If the owner untimely sends you information, you may use your discretion whether to consider it; however, you must still email the owner a final decision no later than 30 days after receiving timely submitted evidence.

(iv) If you determine that an individual has not demonstrated group membership by a preponderance of the evidence, your final decision must specifically reference the evidence in the record that formed the basis for your conclusion and give a detailed explanation of why the evidence submitted was insufficient. It must also inform the individual of the right to appeal, as provided in § 26.89(c), and of the right to reapply at any time by amending the original UCA with evidence of individual social and economic disadvantage under paragraph (d) of this section.

(b) *Evidence and rebuttal of social disadvantage.* (1) If you have a reasonable basis to believe that an individual who is a member of a group in paragraph (a)(1) of this section is not, in fact, socially disadvantaged, you must initiate a proceeding to determine whether the individual's presumption should be regarded as rebutted. Your proceeding must fully comply with the requirements of § 26.87. You have the burden of demonstrating, by a preponderance of the evidence, that the individual is not, in fact, socially disadvantaged. To meet the burden, you must produce evidence that the individual has not been subjected to racial or ethnic prejudice or cultural bias within American society because of the individual's identity as a member of a group in paragraph (a)(1) of this section and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the individual's control.

(2) If an individual's presumption of social disadvantage has been rebutted based on a finding, by the preponderance of the evidence, that the individual is not socially disadvantaged, your final decision must inform the individual of the right to appeal, as provided in § 26.89(c), and of the right to reapply at any time by amending the original UCA with evidence of individual social and economic disadvantage under paragraph (d) of this section.

(c) *Evidence and rebuttal of economic disadvantage.* (1) Each owner(s) on whom the applicant firm relies for certification eligibility must submit the DOE found in the UCA. The owner(s) must declare that the owner's personal net worth (PNW) does not exceed $1.60 million and corroborate the declaration by completing the PNW Statement available at *https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply* without alteration and by using the calculation rules in § 26.68. You must not attempt to rebut presumed economic disadvantage as a matter of course.

(i) An owner whose PNW exceeds the regulation's $1.60 million limit is not presumed economically disadvantaged. The limit is exact. Rounding down is impermissible.

(ii) A certifier may require an owner to provide additional information on a case-by-case basis to verify the accuracy and completeness of the PNW Statement. The certifier must have a demonstrable need for the additional information and avoid imposing an unnecessary burden on an owner. Nor may you impose a disproportionate burden on members of any particular group as doing so could violate Title VI of the Civil Rights Act of 1964, paragraph (b) of this section, and/or 49 CFR part 21.

(2)(i) If you have a reasonable basis to believe that an individual who submits a PNW Statement that is below the $1.60 million limit is not economically disadvantaged, you may rebut the individual's presumption of economic disadvantage.

(ii) In determining whether an individual's presumption of economic disadvantage should be rebutted, you must initiate a proceeding fully complying with the requirements of § 26.87. You have the burden of demonstrating, by a preponderance of the evidence, that a reasonable person would not consider the individual economically disadvantaged. To meet the burden, you must produce evidence that demonstrates that a reasonable person would not consider the individual economically disadvantaged. You may consider indicators including, but not limited to ready access to

wealth; lavish lifestyle; income or assets of a type or magnitude inconsistent with economic disadvantage; or other circumstances that economically disadvantaged people typically do not enjoy. This inquiry gives the § 26.68 asset exclusions, and limitations on inclusions, no effect. It disregards liabilities entirely.

(iii) If you determine that the owner's presumption of economic disadvantage is rebutted, your decision must inform the firm of the right to appeal as provided in § 26.89(c).

(d) *Individualized determinations of social and economic disadvantage*—(1) *Burden of proof.* Firms owned and controlled by individual(s) who are not presumed SED may be eligible for DBE certification. The firm must prove, by a preponderance of the evidence, that the owner seeking to establish an individualized showing of social and economic disadvantage meets the criteria in paragraphs (d)(3) and (4) of this section.

(i) You must consider the evidence presented as a whole. There is no checklist of required evidence.

(ii) An individual need not have filed a complaint of discrimination in order to successfully demonstrate social and/or economic disadvantage.

(2) *Individuals with disabilities.* The Department acknowledges that individuals with disabilities encounter many physical and attitudinal barriers that individuals without disabilities do not have to overcome. It is plausible that many individuals with disabilities—including ''invisible'' disabilities such as (but not limited to) post-traumatic stress disorder, major depressive disorder, dyslexia, anxiety disorder—may be socially and economically disadvantaged. As public entities, certifiers must fully comply with Title II of the American Disabilities Act, which includes ensuring that their DBE programs are fully accessible to individuals with disabilities.

(3) *Individualized determination of social disadvantage.* (i) An owner seeking to establish an individualized showing of social disadvantage must identify at least one objective distinguishing feature that resulted in racial, ethnic, cultural, or other prejudice within American society because of the owner's membership in a group and without regard to individual identity.

(ii) The owner must describe with particularity how the objective distinguishing feature identified in paragraph (d)(3)(i) of this section has resulted in the owner's social disadvantage. The owner may provide evidence related to the owner's education, employment, or any other evidence the owner considers relevant.

Example 1 to paragraph (d)(3). A White male claiming to have experienced disadvantage in employment must provide evidence that his status of belonging to a particular group, *e.g.,* persons with dyslexia, contributed to his disadvantage, as opposed to, *e.g.,* a nationwide economic recession that resulted in widespread unemployment.

(4) *Individualized determination of economic disadvantage.* (i) The owner must submit the Personal Net Worth Statement, available at *https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply,* using the calculation rules in § 26.68. An owner whose PNW exceeds $1.60 million is not economically disadvantaged under any circumstance.

(ii) The owner must describe with particularity how the owner's objective distinguishing feature identified in paragraph (d)(3)(i) of this section has resulted in the owner's economic disadvantage. The owner may provide any financial or other information that the owner considers relevant.

■ 51. Add § 26.68 to read as follows:

§ 26.68 Personal net worth.

(a) *Calculation.* (1) Exclude the SEDO's ownership interest in the applicant or certified firm.

(2) Exclude the SEDO's equity in the SEDO's primary residence, without reference to state marital laws or community property rules. Title to the property governs.

Example 1 to paragraph (a)(2). The SEDO and their spouse hold joint title to their primary residence, for which they paid $300,000 and are coequal debtors on a bank mortgage and a home equity line of credit with current combined balances of $150,000. The SEDO may exclude the SEDO's $75,000 share of the equity. There is no exclusion when the SEDO does not own the home or when attributable debt balances exceed the purchase price.

(3) One hundred percent of the contents of the SEDO's primary residence belong to the SEDO. The total value of household contents is at least the total amount for which they are insured, taking into account all policies, riders, amendments, and endorsements. If the SEDO's spouse or domestic partner cohabits with the SEDO, and the SEDO's primary residence is also the spouse or domestic partner's primary residence, then, subject to the following special rules, the SEDO is deemed to own 50% of those assets.

(4) Motor vehicles of any type belong to the natural person who holds title.

(5) Exclude liabilities contingent on a future event, of unfixed value, and those not owed in full on the date of the PNW Statement.

Example 2 to paragraph (a)(5). The SEDO may not report a projected liability for Federal income tax unless and until the SEDO has reported the precise amount of the SEDO's tax liability on a personal, Federal tax return, duly signed, dated, and filed with the Internal Revenue Service (IRS). If the SEDO has so reported to the IRS, the SEDO may exclude from the PNW Statement only the net amount still owed to the IRS, and not in arrears, on the latter of the regular due date (*e.g.,* April 15) for the return or the date of the PNW Statement. If the SEDO reports and documents such a tax liability, the SEDO must also provide the SEDO's request for deferred payment and, if applicable, the IRS's acquiescence.

(6) A natural person's signatory (not guarantor) status on any debt instrument determines ownership of the liability. A business entity's debt is not the SEDO's liability at all unless:

(i) The SEDO cosigns and is liable for 100% of the debt in the event of default; and

(ii) The creditor is a traditional financial institution or an entity that sells and finances sales of equipment in the ordinary course of its business, provided that the DBE or applicant actually uses the equipment other than incidentally in its business and the equipment secures the debt.

Example 3 to paragraph (a)(6). When the SEDO and two other natural persons are jointly and severally liable to repay the debt, the SEDO may claim to be liable for only one third of principal and interest presently owing.

(7) Include assets transferred to relatives or related entities within the two years preceding an application for certification or one year preceding the due date for a § 26.83(j) declaration, when the assets so transferred during the period have an aggregate value of more than $20,000. Relatives include the owner's spouse or domestic partner, children (whether biological, adopted or stepchildren), siblings (including stepsiblings and those of the spouse or domestic partner), and parents (including stepparents and those of the spouse or domestic partner). Related entities include for-profit privately held companies of which any relative is an owner, officer, director, or equivalent; and family or other trusts of which any relative is grantor, trustee, or beneficiary, except when the transfer is irrevocable.

(8) Exclude the SEDO's direct payments, on behalf of immediate family members or their children, to unrelated providers of healthcare, education, or legal services.

(9) Exclude the SEDO's direct payments to providers of goods and services directly related to a celebration of an immediate family member or her children's significant, normally non-recurring life event such as a christening, munj, bat mitzvah, graduation, wedding, retirement, memorial, or culturally analogous similar commemoration.

(10) Exclude all assets of the SEDO that are held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or retirement investment programs.

(b) *Regulatory adjustments.* The PNW cap will be adjusted by January 1, 2024, or within [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE]. It will be adjusted by multiplying $1,600,000 by the growth in total household net worth since 2019 as described by ''Financial Accounts of the United States: Balance Sheet of Households and Nonprofit Organizations'' produced by the Board of Governors of the Federal Reserve (*https://www.federalreserve.gov/releases/z1/*). Subsequent PNW adjustments will be made every 5 years on the anniversary of the initial adjustment. The Department will post future PNW limit adjustments on the Departmental Office of Civil Rights' web page.

(1) The PNW adjustment will be based on the following formula:

$$\text{Future Year PNW cap} = [\$1{,}600{,}000] * \left[\frac{\text{Q1} - \text{Q4 Average Household Net Worth of Future year}}{\text{Q1} - \text{Q4 Average Household Net Worth of 2019 (\$114,189,981 million)}}\right]$$

(2) The PNW cap will not be adjusted if the future year PNW cap determined under paragraph (b)(1) of this section is less than the previous amount. The cap will increase each year after the Federal Reserve releases its annual data, so long as the amount determined under paragraph (b)(1) is greater than the previous PNW cap.

(c) *Confidentiality.* Notwithstanding any provision of Federal or state law, you must not release an individual's Personal Net Worth Statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that you must transmit this information to DOT in any certification appeal proceeding under § 26.89 or to any other state to which the individual's firm has applied for certification under § 26.85.

■ 52. Revise § 26.69 to read as follows:

§ 26.69 What rules govern determinations of ownership?

(a) *General rule.* A firm's SEDO(s) must own at least 51% of every class of ownership. Each SEDO whose ownership is necessary to the firm's eligibility must demonstrate that his or her ownership satisfies the requirements of this section. If not, the firm is ineligible.

(b) *Ownership acquisition and maintenance.* The SEDO's acquisition and maintenance of his or her ownership interest makes reasonable economic sense (RES) under the circumstances.

(1) *Acquisition.* RES depends in part on the SEDO having acquired ownership at fair value.

(2) *Continuation.* The SEDO's continued ownership makes RES if he or she does not derive undue benefit relative to other owners.

(3) *Proportionality.* RES requires that neither SEDOs nor non-SEDOs derive benefits or bear burdens that are clearly disproportionate to their ownership shares.

(c) *Investments.* The SEDO may acquire ownership by purchase, capital contribution, or gift. Subject to the other requirements of this section, each is considered an ''investment'' in the firm, as are additional purchases, contributions, and gifts. All investments relied upon for eligibility must make RES.

(1) *Irrevocability.* Investments must be unconditional, irrevocable, and at full risk of loss.

(2) *Title.* Title generally determines ownership of investments. The rule in this paragraph (c)(2) operates independently of state or local community property, equitable distribution, or similar provisions. Thus, the person who has title to the investment owns it in proportion to his or her share of title.

(3) *Joint ownership.* When the SEDO jointly owns an investment of cash or property, the SEDO may claim at least a 51% ownership interest only if the other joint owner formally transfers to the SEDO enough of his or her ownership in the investment to bring the SEDO's investment to at least 51% of all investments in the firm. Such transfers may be gifts if they meet the requirements of paragraph (c)(4) of this section.

(4) *Gifts, including by bequest or inheritance.* A gift of an ownership interest to the SEDO is an investment that makes RES when it satisfies the following criteria:

(i) The transferor is or immediately becomes uninvolved with the applicant or DBE in any capacity and in any other business that performs similar work or contracts with the firm other than as a lessor or provider of standard support services;

(ii) The transferor does not derive undue benefit; and

(iii) A writing (*e.g.,* a cancelled check when there is no better evidence) documents the gift.

(d) *Purchases and capital contributions.* (1) Purchases of ownership interests are investments when the consideration is entirely monetary and not a trade of property or services.

(2) Contributed capital may be cash, tangible property, realty, or a combination.

(3) Contributions of expertise or intangible property are investments when they are extraordinary, uniquely suited to the firm's main business, and of reasonably and credibly ascertained value documented at the time of the company's application. In addition, and in all cases, the SEDO must have a substantial financial investment at the time the firm applies for certification and thereafter.

(4) Contributions of time, labor, services, and the like are not investments.

(5) Loans to or from the firm or a non-disadvantaged owner, guarantees, the firm's own purchases and redemptions, and capital contributed by others are not the SEDO's investments.

(e) *Debt-financed investments*—(1) *General rule.* Subject to the other provisions of this section, including the RES requirement, the SEDO may borrow money to finance his/her/their investment entirely or partially if the SEDO has paid, on a net basis, at least 15% of the total value of the investment by the time the firm applies for certification. The net payment must be from the SEDO's own, not borrowed, money. Money that the SEDO receives as a gift or transfer described in paragraph (c)(3) or (4) of this section is the SEDO's own.

Example 1 to paragraph (e)(1). A SEDO who borrows $9,000 of her $10,000 investment in Applicant, Inc., must have repaid, from her own funds, at least $500 of the loan's principal by the time of application.

Example 2 to paragraph (e)(1). A SEDO who finances $8,000 of a $10,000 investment in Applicant, Inc., may apply for certification at any time.

(2) The SEDO must have a significant amount of the SEDO's own money invested and at full risk of loss.

(3) The loan must be real, enforceable, not in default, and not offset by another agreement.

(4) The SEDO must be the debtor.

(5) The firm may not be party to the loan in any capacity, nor can its property serve as collateral. The SEDO may not rely on the company's credit to finance his or her investment.

(6) When the creditor forgives the debt or the SEDO defaults, the firm is no longer eligible.

(7) The overall investment must make RES.

(f) *Curative measures.* The rules of this section do not preclude transactions that further the objectives of, and compliance with, the provisions of this part. The SEDO or firm may enter into legitimate transactions, alter the terms of ownership, make additional investments, or bolster underlying documentation in a good faith effort to correct impediments to eligibility, as long as the actions are consistent with this part and make RES. The certifier should not hinder the SEDO or firm when it attempts to become compliant with certification requirements of this part.

(g) *Anti-abuse rules.* (1) Transactions lacking RES or apparent business purpose may be disregarded.

(2) Multiple transactions occurring within any 2-year period may be considered one transaction that leads from beginning circumstances to end result.

(3) Transactions that have evasive effect are null and void.

■ 53. Revise § 26.71 to read as follows:

§ 26.71 What rules govern determinations concerning control?

(a) *General rules.* (1) SEDOs of at least 51% of the company must control it.

(2) Control determinations must consider all pertinent facts, viewed together and in context.

(3) A firm must have operations in the business for which it seeks certification at the time it applies. Certifiers do not certify plans or intentions or issue contingent or conditional certifications.

(b) *SEDO as final decision maker.* The SEDO must be the ultimate decision maker in fact, regardless of operational, policy, or delegation arrangements.

(c) *Governance.* Governance provisions may not require that the SEDO obtain concurrence or consent from a non-SEDO or other participant to transact business on behalf of the firm.

(1) *Highest officer position.* A disadvantaged owner must hold the highest officer position in the company (*e.g.,* chief executive officer or president).

(2) *Board of directors.* Except as detailed in paragraph (c)(4) of this section, the SEDO must have present control of the firm's board of directors, or other governing body, through the number of eligible votes.

(i) *Quorum requirements.* Provisions for the establishment of a quorum must not block the SEDO from calling a meeting to vote and transact business on behalf of the firm.

(ii) *Shareholder actions.* SEDO(s) authority to change the firm's composition via shareholder action does not prove control within the meaning of paragraph (c) of this section.

(3) *Partnerships.* In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

(4) *Exception.* Bylaws or other governing provisions that require non-SEDO consent for extraordinary actions generally do not contravene the rules in paragraph (c) of this section. Non-exclusive examples are a sale of the company or substantially all of its assets, mergers, and a sudden, wholesale change of type of business.

(d) *Expertise.* The SEDO must have an overall understanding of the business and its essential operations sufficient to make sound managerial decisions not primarily of an administrative nature. The requirements of this paragraph (d) vary with type of business, degree of technological intensity, and scale. In some cases, managerial competence suffices.

(e) *SEDO decisions.* The firm must show that the SEDO critically analyzes operational information provided to the owner by other participants in the firm's activities and has made reasonable business decisions based on the SEDO's independent analysis.

(f) *Delegation.* The SEDO may delegate administrative activities or operational oversight to others if the SEDO retains unilateral power to terminate the delegate(s) and the chain of command is evident to all participants in the company and persons associated which the firm does business.

(1) No non-SED participant may have power equal to or greater than that of the SEDO, considering all the circumstances. Aggregate magnitude and significance govern; a numerical tally does not.

(2) Non-SED participants may not make non-routine purchases or disbursements, enter into substantial contracts, or make decisions that affect company viability without the SEDO's consent.

(3) Written provisions or policies that specify the terms under which non-SED participants may sign or act on the SEDO's behalf with respect to recurring matters generally do not violate paragraph (f) of this section, as long as they are consistent with the SEDO having exclusive and ultimate responsibility for the action.

(g) *Independent business.* When the firm receives from or shares personnel, facilities, equipment, financial support, or other essential resources, with another business or individual on other than commercially reasonable terms, the firm must prove that it would be viable as a going concern without the arrangement.

(h) *Franchise and license agreements.* (1) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licenser is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, if the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(2) A DBE must not regularly use another firm's business-critical vehicles, equipment, machinery, or facilities to provide a product or service under contract to the same firm or one in a substantially similar business.

(i) *Exception 1.* This paragraph (h)(2) does not preclude the firm from providing services to a single customer or to a small number of them, provided that the firm is not merely a conduit, captive, or unnecessary third party acting on behalf of another firm or individual. Similarly, providing a volume discount to such a customer does not impair viability unless the firm

repeatedly provides the service at a significant and unsustainable loss.

(ii) *Exception 2.* A DBE may share essential resources and deal exclusively with another firm that the SEDO 51% owns and controls.

■ 54. Revise § 26.73 to read as follows:

§ 26.73 What rules govern the assignment of NAICS codes?

(a) You must grant certification to a firm only for specific types of work in which the SEDOs control. To become certified in an additional type of work, the firm must demonstrate to you only that its SEDOs control the firm with respect to that type of work. You must not require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

(1) The types of work a firm performs (whether on initial certification or when a new type of work is added) must be described in terms of the most specific available NAICS code for that type of work. If you choose, you may also, in addition to applying the appropriate NAICS code, apply a descriptor from a classification scheme of equivalent detail and specificity. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. Multiple NAICS codes may be assigned where appropriate. Program participants must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification.

(2) Firms and certifiers must check carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work which the UCP has determined the firm's owners can control. The firm bears the burden of providing detailed company information the certifying agency needs to make an appropriate NAICS code designation.

(3) If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that the certifying agency, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and recipients should not rely on such a description in determining whether a firm's participation can be counted toward DBE goals.

(4) A certifier is not precluded from changing a certification classification or description if there is a factual basis in the record. However, certifiers must not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

(b) [Reserved]

■ 55. Amend § 26.81 by:

■ a. Revising paragraphs (a)(1) and 5.

■ b. In paragraph (e), removing the word ''the'' from the first sentence.

■ c. Revising paragraph (g).

The revisions read as follows:

§ 26.81 What are the requirements for Unified Certification Programs?

(a) * * *

(1) You and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval.

* * * * *

(5) If you and the other recipients in your state fail to meet the deadlines set forth in paragraph (a) of this section, you will have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary will direct you to complete the required action by a certain date. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.

* * * * *

(g) Each UCP must maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this part), the information required by § 26.31. The UCP must make the directory available to the public electronically, on the internet. The UCP must update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.

* * * * *

■ 56. Amend § 26.83 by:

■ a. Revising the section heading and paragraph (c)(1)(i), (c)(3), (h), (i)(3), (j), (k), (l), and (m).

■ b. Adding paragraph (n).

The revisions and addition read as follows:

§ 26.83 What procedures do certifiers follow in making certification decisions?

* * * * *

(c)(1) * * *

(i) Perform an on-site visit, virtually or in person, to the firm's principal place of business. You must interview the principal owners and officers and review their résumés and/or work histories. You may interview key personnel of the firm if necessary. You may make an audio recording of the interview. You must also perform an on-site visit, either virtually or in-person, to job sites if there are sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area;

* * * * *

(3) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This must be done in the form of an unsworn Declaration of Eligibility executed under penalty of perjury of the laws of the United States.

* * * * *

(h)(1) Once you have certified a DBE, it must remain certified until and unless you have removed its certification, in whole or in part (i.e, NAICS Code removal), through the procedures of § 26.87.

(2) You may not require a DBE to reapply for certification or undergo a recertification process. However, you may conduct a certification review of a DBE firm, including a new on-site review (virtually or in person), if appropriate in light of changed circumstances (*e.g.,* of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under § 26.88), a complaint, or other information concerning the firm's eligibility. If information comes to your attention that leads you to question the firm's eligibility, you may conduct an on-site review (virtually or in person) on an unannounced basis, at the firm's offices and job sites. You may also rely upon the site visit report of any other certifier with respect to a firm applying for certification, if it falls within the on-site review timeframe specified in your UCP agreement.

(i) * * *

(3) The notice must take the form of an unsworn Declaration of Eligibility executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under § 26.109(c).

(j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an unsworn Declaration of Eligibility executed under penalty of perjury of the laws of the United States. This declaration must affirm that there

have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The declaration must specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts (*e.g.,* submission of Federal tax returns). If you fail to provide this declaration in a timely manner, you will be deemed to have failed to cooperate under § 26.109(c).

(k) You must advise each applicant within 30 days from your receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

(l) If you are a certifier, you must issue decisions on applications for certification within 90 days of receipt of all information required from the applicant under this part. You may extend this time period once, for no more than an additional 30 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. On a case-by-case basis, the concerned OA may allow you to further extend the deadline one time if it receives from you a written explanation of why you need more time. Your failure to issue a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under § 26.89. You may also be subject to noncompliance penalties described in §§ 26.103 and 26.105.

(m)(1) You may notify the applicant about ineligibility concerns that you may have and allow the firm to rectify deficiencies within the period for making a decision in paragraph (l) of this section.

(2) If a firm takes curative measure before your decision, you must consider any evidence it submits to you of having taken such measures. A curative measure does not automatically equate to a firm's attempt to circumvent the rules of this part.

Example 1 to paragraph (m)(2). The firm may obtain proof of a financial contribution meeting the ownership requirements in § 26.69.

Example 2 to paragraph (m)(2). The firm might revise a disqualifying operating agreement or bylaw provision to meet the control requirements in § 26.71.

(n) Except as otherwise provided in this paragraph (n), if an applicant for DBE certification withdraws its application before you have issued a decision on the application, the applicant can resubmit the application at any time. As a recipient or UCP, you may not apply the waiting period provided under § 26.86(c) before allowing the applicant to resubmit its application. However, you may place the reapplication at the ''end of the line,'' behind other applications that have been made since the firm's previous application was withdrawn. You may also apply the waiting period provided under § 26.86(c) to a firm that has established a pattern of frequently withdrawing applications before you make a decision.

■ 57. Revise § 26.85 to read as follows:

§ 26.85 Interstate certification.

(a) *Applicability.* This section applies to a DBE certified in any state (''State A'').

(b) *General rule.* When a DBE certified in State A applies to another state (''State B'') for DBE certification, State B must accept State A's certification of the DBE.

(c) *Application procedure.* To obtain certification in State B, the DBE must provide:

(1) A cover letter with its application that specifies that it is applying for interstate certification;

(2) A copy of the certificate from State A or an electronic image of the UCP directory of State A that shows the DBE certification; and

(3) A DOE signed under penalty of perjury. This is the same declaration described in § 26.83(j).

(d) *Verification of eligibility.* Within 10 business days of receiving the documents required under paragraph (c) of this section, State B must verify the certification of the DBE by reference to the online UCP directory of State A.

(e) *Certification.* If the DBE fulfils the requirements of paragraph (c) of this section and State B affirmatively verifies the State A certification, State B must certify the DBE without undergoing further procedures and provide the DBE with a letter documenting its certification in State B.

(f) *Noncompliance.* Failure of State B to comply with paragraphs (d) and (e) of this section would be considered non-compliance with this part.

(g) *Post-interstate certification proceedings*—(1) *Requests for records.* After State B certifies the DBE, the UCP may request a fully unredacted copy of all, or a portion of, the DBE's certification file from any other UCP in which the DBE is certified.

(2) *Availability of records.* A UCP must provide a complete unredacted copy of the DBE's certification material to State B within 10 business days of receiving the request. Confidentiality requirements of §§ 26.83(d) and 26.109(b) do not apply.

(3) *Oversight and compliance activities related to an out-of-state DBE.* Once State B certifies a DBE through the interstate certification process, it becomes a DBE in State B and must be treated like any other DBE in its directory of certified firms.

(i) The DBE must provide an annual Declaration of Eligibility with documentation of gross receipts, under § 26.83(j), to State B on the anniversary date of the DBE's State A certification.

(ii) State B may conduct its own certification review of a DBE under § 26.83(h), or as specified in its UCP plan.

(iii) State B must conduct its own investigation of third-party complaints, State A, or any other UCP where the firm holds certification, must cooperate to the extent required by paragraph (h) of this section and § 26.109(c).

(iv) Except as described in paragraph (j) of this section, State B must initiate its own decertification proceedings to remove a DBE's eligibility if it finds reasonable cause to believe that the DBE is ineligible.

(v) If State B decertifies a DBE for any reason, State B must email a copy of its decision to State A and make the decision available to any UCP upon request within 10 business days.

(4) *Joint decertification proceedings.* Any UCP may join a decertification proceeding initiated by another state, pursuant to § 26.87, on the same grounds and facts specified in the notice proposing to remove eligibility.

(i) The UCP joining the decertification proceeding may present evidence at the hearing, but it cannot add additional grounds for decertification not specified in the initiating state's notice proposing removal.

(ii) After a UCP(s) joins another state's decertification proceedings, the final notice of decision applies to all states that are a party to the action. The final notice must include the appeal instructions in § 26.86(a).

(5) *Ineligibility database.* (i) When a UCP decertifies a firm, in whole or in part (*i.e.,* NAICS code removal), it must make an entry in the Departmental Office of Civil Rights' (DOCR) online ineligibility database. The UCP must enter the following information:

(A) The name of the firm;

(B) The name(s) of the firm's owner(s);

(C) The type and date of the action; and

(D) The reason for the action.

(ii) A UCP must check DOCR's online ineligibility database at least once every month to determine whether any DBE your UCP certified or is applying to your UCP is in the database.

(iii) For any such firm in paragraph (k)(2) of this section that is on the list, a UCP must promptly request a copy of the adverse decision from the UCP that made the decision. If the UCP receives such a request, it must provide a copy of the decision to the requesting UCP within 5 business days of receiving the request. The UCP receiving the decision must then consider the information in the decision in determining what, if any, action to take with respect to the DBE firm or applicant.

(6) *Effect of DOT's appeal decisions.* If a DBE appeals a decertification decision, and the Department upholds the decision, the firm will lose its DBE eligibility in every UCP in which it is certified.

(i) *Exception.* The rules of this section do not apply when the Department upholds a decertification decision that is based on grounds specific to a DBE's actions pertaining to a specific UCP under §§ 26.83(j) (Declaration of Eligibility) and 26.87(e)(6) (failure to cooperate).

(ii) [Reserved]

■ 58. Revise § 26.86 to read as follows:

§ 26.86 What rules govern certifiers' denials of in-state certification applications?

(a) When you deny a request by a firm an application for certification, you must provide the applicant firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason. You must also include, verbatim, the following instructions for filing an appeal with DOT:

> You may appeal this decision to the U.S. Department of Transportation. If you want to file an appeal, you must email the Department at *DBEAppeals@dot.gov* within 45 days of the date of this decision, setting forth a full and specific statement as to why you believe this decision is erroneous, what significant facts that you believe we did not consider, or what provisions of the DBE program regulation you believe we misapplied. You have the right to request copies of all documents and other information on which this decision is based. USDOT does not accept notices of intent to appeal, partial appeals, or otherwise non-compliant submissions. Please include a copy of this letter and your contact information when you file your appeal.

(b) You must promptly provide the applicant copies of all documents and other information on which you based the denial if the applicant requests them.

(c) You must establish waiting period of no more than twelve months. After the waiting period expires, the denied firm may reapply to any member of the UCP that denied the application. The time period for reapplication begins to run on the date you send the denial letter. An applicant's appeal of your decision to the Department pursuant to § 26.89 does not extend this period. You must include this information, including the waiting period for reapplication, in your denial letter.

■ 59. Revise § 26.87 to read as follows:

§ 26.87 What procedures does a certifier use to remove a DBE's certification?

(a) *Burden of proof.* If you seek to decertify a DBE under the circumstances described in paragraph (b), (c), or (d) of this section, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(b) *Ineligibility complaint.* (1) Any person may file with you a written complaint explaining why you should decertify a certified firm. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in § 26.109(b).

(2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.

(3) If you determine, based on this review, that there is reasonable cause to believe that the firm is no longer eligible for DBE certification, you must provide the firm written notice of your intent to decertify it, setting forth the reasons for the proposed determination. The written notice must offer the firm an opportunity for an informal hearing or to submit written arguments or evidence demonstrating its continued eligibility. If you determine that reasonable cause for decertifying the firm does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(c) *DOT directive.* (1) If an OA determines that there is reasonable cause to believe that a firm you or another member of your UCP certified does not meet the eligibility criteria of this part, the OA may direct you to initiate a proceeding to remove the firm's certification.

(2) The OA must provide you and the firm written notice setting forth the reasons for the directive, including any relevant documentation or other information.

(3) You must immediately commence a proceeding to remove eligibility as provided by paragraph (d) of this section.

(d) *Certifier-initiated proceeding.* If you determine that you have reasonable cause to decertify a firm, you must provide the firm written notice of your intent (NOI) to decertify it. The NOI must state clearly and succinctly each of the reasons for the proposed action and must specifically identify all the information on which you base each reason.

(e) *Grounds for decertification.* Your notices of intent and final decertification decisions must specifically identify which of the following ground(s) you rely on:

(1) Changes in the firm's circumstances since the certification of the firm by you or another member of your UCP that render the firm unable to meet the eligibility standards of this part;

(2) The firm fails to timely submit an annual Declaration of Eligibility per § 26.83(j);

(3) Information or evidence regarding the firm's eligibility that was not available to you at the time the firm was certified;

(4) Information relevant to eligibility that the firm concealed or misrepresented;

(5) A change in DOT's certification standards or requirements after the firm was certified. In this instance, you must offer the firm, in writing, an opportunity to cure any defects within 30 days. If the firm does not do so, you may proceed with sending the firm a notice of intent to decertify;

(6) Your decision to certify the firm was clearly erroneous;

(7) The firm has failed to cooperate with you under § 26.109(c);

(8) The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program; or

(9) The firm has been suspended or debarred for conduct related to the DBE program. The notice required by paragraph (h) of this section must include a copy of the suspension or

debarment action. A decision to remove a firm for this reason will not be subject to the hearing procedures in paragraph (d) of this section.

(f) *Hearing.* When you notify a DBE that you have reasonable cause to decertify it, as provided in paragraph (b), (c), or (d) of this section, you must give the firm written notification of an opportunity for an informal hearing. The hearing must be conducted either in person or virtually using an interactive video conference. The firm may accept the hearing offer via properly addressed email sent by 4:30 p.m. in the certifier's time zone by the 7th day following the date of the NOI; failure of the firm to do so will result in the firm's forfeiture of the hearing opportunity. You and the firm must schedule and conduct the hearing not more than 45 business days (unless otherwise authorized by the appropriate OA) after you notify the firm of the opportunity to have a hearing. The firm may elect to submit written arguments or other information in lieu of a hearing. In either situation, you bear the same burden of proving, by a preponderance of the evidence, that the firm is no longer eligible for participation in the DBE program. The firm must submit the written arguments or other information no later than 7 days prior to the hearing date.

(1) At the hearing the SEDO may respond to the reasons for the proposal to remove the firm's certification and provide information and arguments concerning why it should remain certified. However, the firm is not entitled to a hearing if the ground for decertification is the firm's failure to timely submit a § 26.83(j) annual declaration. If the firm does not provide the annual declaration within 15 days of your NOI, you may issue a final notice of decertification based on § 26.83(j) and/or § 26.109(c).

(2) Questions related to the SEDO's control of the firm must be answered by the SEDO. The SEDO's attorney, a non-SEDO or other individuals involved with the firm are permitted to attend the hearing and answer questions related to their own experience or more generally about the firm's ownership, structure, and operations. No part of this paragraph (f)(2) precludes the SEDO from having attorney representation at the hearing.

(3) You must maintain a complete and verbatim record of the hearing, either in writing or audio (or both). If the firm appeals to DOT under § 26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing.

(g) *Separation of functions.* You must ensure that the decision in a proceeding to decertify a firm is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to decertify the firm and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

(1) Your method of implementing this requirement must be made part of your DBE program and approved by the appropriate OA.

(2) The decisionmaker must be an individual who is knowledgeable about the certification requirements of this part.

(h) *Notice of decision.* You must send the firm a final written decision no later than 30 days of the informal hearing and/or receiving written arguments/evidence from the firm in response to your NOI. If you decide to decertify the firm, you must provide the firm a written notice of decertification (NOD).

(1) The NOD must describe with particularity the reason(s) for your decision, including specific references to the evidence in the record that supports each reason. The NOD must also inform the firm of the consequences of your decision under paragraph (j) of this section and of its appeal rights under § 26.89.

(2) You must send copies of the NOD to the complainant in an ineligibility complaint or to the OA that directed you to initiate the proceeding.

(3) When sending a copy of an NOD to a complainant other than an OA, you must not include information reasonably construed as confidential business information, unless you have the written consent of the firm that submitted the information.

(4) You must make an entry in DOCR's online ineligibility determination database. You must enter the name of the firm, names(s) of the firm's owner(s), date of your decision, and the reason(s) for your action.

(i) *Status of firm during proceeding.* (1) A firm remains an eligible DBE during the pendency of your proceeding to remove its eligibility.

(2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (h) of this section.

(j) *Effects of removal of eligibility.* When you remove a firm's eligibility, you must take the following actions:

(1) When a prime contractor has made a commitment to using the ineligible firm, but a subcontract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made good faith efforts to do so.

(2) When you have made a commitment to using a DBE prime contractor, but a contract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward your overall DBE goal.

(3) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm and may continue to receive credit toward the DBE goal for the firm's work. In this case, however, the prime contractor may not extend or add work to the contract after the firm was notified of its ineligibility without prior written concurrence from recipient.

(4) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm as set forth in paragraph (j)(3) of this section; however, the portion of the ineligible firm's continued performance of the contract must not count toward your overall goal.

(5) If you have executed a prime contract with a DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility must not count toward your overall goal, but the DBE's performance of the contract may continue to count toward satisfying the contract goal.

(6) The following exceptions apply to paragraph (j) of this section.

(i) If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility toward your overall goal as well as toward the contract goals.

(ii) If the DBE's ineligibility results from its acquisition by a non-DBE, you may not continue to count the portion of the ineligible firm's performance on the contract remaining after you issued the notice of its ineligibility toward either the contract goal or your overall goal, even if a prime contractor has executed a subcontract with the firm or you have executed a prime contract with the DBE that was later ruled ineligible. In this case, if eliminating the credit of the ineligible firm will affect the prime contractor's ability to meet the contract goal, you must direct the prime contractor to subcontract to an eligible DBE firm to the extent needed to meet the contract goal, or demonstrate to you that it has made good faith efforts to do so.

■ 60. Revise § 26.88 to read as follows:

§ 26.88 Summary suspension of certification.

(a) *Definition, operation, and effect.* Summary suspension is an extraordinary remedy for lapses in compliance that cannot reasonably or adequately be resolved by other means. A certifier may summarily suspend a DBE's certification in the circumstances and according to the procedures described in this section.

(1) A firm's certification is suspended under this part as soon as the certifier transmits electronic notice to its owner at the last known email address.

(2) During the suspension period, the DBE may not be considered to meet a contract or participation goal on contracts executed during the suspension period.

(b) *Mandatory and elective suspensions*—(1) *Mandatory.* The certifier must summarily suspend a DBE's certification when:

(i) The certifier has clear and credible evidence of the DBE's or its SEDO's involvement in fraud or other serious criminal activity.

(ii) The OA with oversight so directs.

(2) *Elective.* The certifier has discretion to suspend summarily when:

(i) It has clear and credible evidence that the DBE's continued certification poses a substantial threat to program integrity; or

(ii) An owner upon whom the firm relies for eligibility does not timely file the declaration and gross receipts documentation that § 26.83(j) requires.

(3) *Flexibilities.* In most cases, an information request or notice of intent under § 26.87 to decertify is a sufficient response to events described in paragraphs (b)(1) and (2) of this section. The certifier should consider the burden to the DBE and to itself in determining whether summary suspension is a more prudent and proportionate, effective response. The certifier may elect to suspend the same DBE just once in any 12-month period.

(c) *Procedures*—(1) *Notice.* The certifier must notify the firm, by email, of its summary suspension on a business day during regular business hours. The notice must explain the action, the reason for it, the consequences, and the evidence on which the certifier relies.

(i) Elective summary suspensions must only provide a single reason for the action.

(ii) Mandatory summary suspensions may provide multiple reasons.

(iii) In either scenario, *i.e.,* elective or mandatory, the notice must demand that the DBE show cause why it should remain certified and provide the time and date of a virtual show-cause hearing at which the firm may present information and arguments concerning why the certifier should lift the suspension.

(2) *Other requirements.* As used in this section, ''days'' refers to calendar days unless otherwise stated. The hearing date must be on a business day that is at least 15 but not more than 25 days after the date of the notice. The DBE may respond in writing in lieu of or in addition to attending the hearing; however, it will have waived its right to a hearing if it does not confirm its attendance within 10 days of the notice and will have forfeited its certification if it does not acknowledge the notice within 15 days. The show-cause hearing must be conducted as a video conference on a standard commercial platform that the DBE may readily access at no cost.

(3) *DBE response.* The DBE may provide information and arguments concerning its continuing eligibility until the 15th day following the suspension notice or the day of the hearing, if any, whichever is later. The DBE may email or fax its written response or send it via common carrier or courier. Email submissions correctly addressed are effective when sent; faxes are effective when and to the extent confirmed; and physical deliveries are effective when the carrier confirms delivery. While there is no requirement that the DBE appear at the scheduled hearing, as noted in paragraph (c)(2) of this section, it must opt in, acknowledge, and/or respond within the time frames noted. The certifier may permit additional submissions after the hearing, as long as the extension is on a business day that is not more than 30 days after the notice.

(4) *Failure to cancel or appear.* If the DBE confirms its attendance at the hearing, does not cancel its confirmation at least 5 days before the hearing, and does not appear, it forfeits its certification. If the certifier does not hold a hearing that the DBE has accepted, it forfeits the suspension. The parties, however, may negotiate in good faith to reschedule to another time or business day that is no later than 29 days from the notice of suspension.

(5) *Scope and burdens.* (i) Suspension proceedings are limited to the suspension ground specified in the notice.

(ii) The certifier may not amend its reason for summarily suspending certification, nor may it electively suspend the firm again during the 12-month period following the notice.

(iii) The DBE has the burden of producing information and/or making arguments concerning its continued eligibility, but it need only contest the reason cited. No other evidence is required.

(iv) The certifier has the burden of proving its case by a preponderance of the evidence. It must send the suspended firm a notice of decertification (NOD) within 30 days of the suspension notice or lift the suspension. Any NOD must rely only on the reason given in the summary suspension notice, and it must meet requirements in § 26.87(g). Such an NOD is deemed to be a final decision under § 26.87(g) to remove certification.

(v) The DBE's failure to provide information contesting the suspension does not impair the certifier's ability to prove its case. That is, the uncontested evidence upon which the certifier relies in its notice will constitute a preponderance of the evidence for purposes of the NOD, and the decertification will become final, provided that the certifier complies with applicable rules in this part.

(6) *Duration.* The DBE remains suspended during the proceedings described in this section but in no case for more than 30 days. If the certifier has not lifted the suspension or provided a rule-compliant NOD by 4 p.m. in the certifier's time zone on the 45th day, then it must lift the suspension and amend DBE lists and databases as necessary, by 12 p.m. in the certifier's time zone the following business day.

(d) *Remedies*—(1) *Appeal.* The DBE may appeal a final decision under paragraph (c)(5)(iv) of this section, as provided in § 26.89(c), but may *not* appeal the suspension itself, unless paragraph (d)(2) of this section applies.

(2) *Injunctive relief.* A new, elective suspension occurring within 12 months of an earlier elective suspension is null and void. The DBE subject to such a

suspension may immediately petition the Department to enjoin its enforcement. Similarly, a suspended DBE may request injunctive relief when the certifier fails to act within the time specified in paragraph (c)(6) of this section. In either case, the DBE must:

(i) Email the request under the subject line, ''Request for Injunctive Relief'';

(ii) Limit the request to a one-page explanation that includes the certifier's name and the suspension dates; contact information for the certifier, the DBE, and the DBE's SEDO(s); and the general nature and date of the firm's response, if any, to the second suspension notice; and

(iii) Attach both suspension notices.

(3) *Withdrawal.* A DBE may withdraw from the program at any time before the certifier's final decision to remove certification.

■ 61. Revise § 26.89 to read as follows:

§ 26.89 Appeals to the Department.

(a)(1) If you are a firm that is denied certification or whose certification is removed by a certifier, you may appeal to the Department.

(2) If you are a complainant in an ineligibility complaint to a certifier (or the concerned Operating Administration in the circumstances provided in § 26.87(c)), you may appeal to the Department if the certifier does not find reasonable cause to propose removing the firm's certification or, following a removal of eligibility proceeding, determines that the firm is eligible.

(3) If you want to file an appeal, you must send a letter to the Department within 45 days of the date of the certifier's final decision, including information and setting forth a full and specific statement as to why you believe the decision is erroneous, what significant fact(s) the certifier failed to consider, or what provisions of this part you believe the certifier did not properly apply. The Department may accept an appeal filed later than 45 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal or in the interest of justice.

(4) You may email your appeal to *DBEAppeals@dot.gov* or mail or deliver it to U.S. Department of Transportation, Departmental Office of Civil Rights, W78–101, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

(b) Pending the Department's decision, the certifier's decision remains in effect. The Department does not stay the effect of the decision while it is considering an appeal.

(c) When it receives an appeal, the Department requests a copy of the certifier's complete administrative record in the matter. The certifier must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a certifier's showing of good cause.

(1) If you are an appellant who is a firm which has been denied certification, whose certification has been removed, whose owner is determined not to be a member of a designated disadvantaged group, or whose owner the presumption of disadvantage has been rebutted, your letter must state the name and address of any other recipient which currently certifies the firm, which has rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending. Failure to provide this information may be deemed a failure to cooperate under § 26.109(c).

(2) If you are an appellant other than one described in paragraph (c)(1) of this section, the Department will request, and the firm whose certification has been questioned must promptly provide, the information called for in paragraph (c)(1) of this section. Failure to provide this information may be deemed a failure to cooperate under § 26.109(c).

(d)(1) You must ensure that the administrative record is well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you for immediate correction. Failure to send a corrected record within seven days of the Department's request will be deemed a failure to cooperate under § 26.109(c).

(2) If an appeal is brought concerning one certifier's certification decision regarding a firm, and that certifier relied on the decision and/or administrative record of another certifier, this requirement applies to both certifiers involved.

(e) The Department decides only the issue(s) presented on appeal. It does not reexamine overall eligibility, conduct a *de novo* review, or hold hearings. It considers the administrative record and any additional information it considers relevant. The Department resolves appeals on substantive and/or procedural grounds.

(f)(1) The Department affirms your decision if it determines that your decision is supported by substantial evidence and is consistent with the provisions of this part concerning certification.

(2) The Department reverses your decision if it determines that your decision is not supported by substantial evidence or is inconsistent with the provisions of this part concerning certification. The Department will direct you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.

(3) The Department is not required to reverse your decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

(4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the decision to you with instructions seeking clarification and/or augmentation of the record. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.

(5) The Department does not uphold your decision based on grounds not specified in your decision.

(6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

(7) The Department may summarily dismiss an appeal. Reasons for doing so may include (but are not limited to) the Department's own initiative, a withdrawal request from the appellant, non-compliance with paragraph (c) of this section, or a request by the certifier to reconsider its decision.

(g) The Department does not issue advisory opinions.

(h) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other certifier whose administrative record or decision has been involved in the proceeding (see paragraph (d) of this section).

(i) If practicable, the Department will issue a written decision within 180 calendar days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department will provide written notice to concerned parties, including a statement of the reason(s) for the delay and an approximate date by which it will render an appeal decision.

(j) As a certifier, when you provide supplemental information to the

Department, you must also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplemental information it receives from any source.

(k) All decisions under this section are administratively final and are not subject to petitions for reconsideration.

(l) Final decisions are normally published without redactions on DOCR's website. Decisions will likely contain confidential business and financial information and/or personally identifiable information. Therefore, DOCR, within its full discretion, may publish final decisions issued under this section with any necessary redactions.

§ 26.91 [Amended]

■ 62. Amend § 26.91 by:

■ a. Removing the words ''recipients'' and ''recipient'' wherever they appear and adding in their places the words ''certifiers'' and ''certifier'', respectively.

■ b. In paragraph (b)(1), removing the cross-reference ''§ 26.87(i)'' and adding in its place the cross-reference ''§ 26.87(j)''.

§ 26.103 [Amended]

■ 63. Amend § 26.103 in paragraph (d)(2) by removing the words ''being in compliance'' and adding in their place the word ''complying''.

Appendix A to Part 26 [Amended]

■ 64. Amend appendix A in paragraph IV.A.(1) by removing the word ''conducing'' and adding in its place the word ''conducting''.

Appendix B to Part 26 [Removed and Reserved]

■ 65. Remove and reserve appendix B to part 26.

Appendices E through G to Part 26 [Removed]

■ 66. Remove appendices E through G to part 26.

[FR Doc. 2022–14586 Filed 7–20–22; 8:45 am]

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Part III

Consumer Product Safety Commission

16 CFR Part 1421
Safety Standard for Debris Penetration Hazards; Proposed Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1421

[CPSC Docket No. CPSC–2021–0014]

Safety Standard for Debris Penetration Hazards

AGENCY: Consumer Product Safety Commission

ACTION: Notice of proposed rulemaking; notice of opportunity for oral presentation of comments.

SUMMARY: The U.S. Consumer Product Safety Commission (Commission or CPSC) has determined preliminarily that there is an unreasonable risk of injury and death associated with debris penetration in off-highway vehicles (OHVs), including recreational off-highway vehicles (ROVs) and utility task/terrain vehicles (UTVs). To address these risks, the Commission proposes a rule to prevent debris penetration into the occupant area of an ROV/UTV. The Commission is providing an opportunity for interested parties to present written and oral comments on this notice of proposed rulemaking (NPR). Like written comments, any oral comments will be part of the rulemaking record.

DATES:

Deadline for Written Comments: Written comments must be received by September 19, 2022.

Deadline for Request to Present Oral Comments: Any person interested in making an oral presentation must send an electronic mail (email) indicating this intent to the Division of the Secretariat at *cpsc-os@cpsc.gov* by August 22, 2022.

ADDRESSES:

Written Comments: You may submit written comments in response to the proposed rule, identified by Docket No. CPSC–2021–0014, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by email, except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/Hand Delivery/Courier Written Submissions: Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov*.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket for NPR: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2021–0014, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Han Lim, Directorate for Engineering Sciences, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850; telephone: 301–987–2327; *hlim@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

On May 11, 2021, the Commission published an advance notice of proposed rulemaking (ANPR) to develop a rule to address the risk of injury associated with fire and debris penetration hazards in off-highway vehicles (OHVs) (86 FR 25817).[1] The vehicles comprising OHVs in the ANPR were all-terrain vehicles (ATVs), recreational off-highway vehicles (ROVs), and utility terrain or utility task vehicles (UTVs). The Commission received 10 comments. The Commission is issuing this notice of proposed rulemaking that focuses solely on debris penetration hazards, which are specific to ROVs and UTVs.[2] Debris penetration through the floorboard or wheel well of an ROV or UTV can impale the occupants of the vehicles, and incidents associated with debris penetration have caused severe injuries and deaths. The information discussed in this preamble is derived from CPSC staff's briefing package for the NPR, which is available on CPSC's website at: *https://www.cpsc.gov/s3fs-public/NPR-Safety-Standard-for-Recreational-Off-Highway-Vehicle-and-Utility-Task-Terrain-Vehicle-Debris-Penetration-Hazards-Updated-5-24-22.pdf?VersionId=WsZvCXh1daVDICnjLnOzyalVPE4uTL4t.*

This rulemaking addressing the debris penetration hazards associated with ROVs and UTVs falls under the authority of the CPSA. 15 U.S.C. 2051–2084. Section 7(a) of the CPSA authorizes the Commission to promulgate a mandatory consumer product safety standard that sets forth performance or labeling requirements for a consumer product, if such requirements are reasonably necessary to prevent or reduce an unreasonable risk of injury. 15 U.S.C. 2056(a). Section 9 of the CPSA specifies the procedure that the Commission must follow to issue a consumer product safety standard under section 7 of the CPSA. In accordance with section 9, the Commission commenced this rulemaking by issuing an ANPR.

According to section 9(f)(1) of the CPSA, before promulgating a consumer product safety rule, the Commission must consider, and make appropriate findings to be included in the rule, on the following issues:

- The degree and nature of the risk of injury that the rule is designed to eliminate or reduce;
- The approximate number of consumer products subject to the rule;
- The need of the public for the products subject to the rule and the probable effect the rule will have on utility, cost, or availability of such products; and

[1] At the ANPR stage, the Commission noted that although at that time the rulemaking involved three vehicle types and two different hazard patterns, it was possible that the Commission would divide the proceeding into separate rulemakings at the NPR stage. This proposed rule will address the debris penetration hazard associated with ROVs and UTVs. The Commission intends to address fire hazards associated with ATVs, ROVs, and UTVs in a separate rulemaking.

[2] The Commission voted 4–0 to approve this notice, as amended: *https://www.cpsc.gov/s3fs-public/Comm-Mtg-Min-NPR-Safety-Standard-for-Recreational-Off-Highway-Vehicle-and-Utility-Task-Terrain-Vehicle-Debris-Penetration-Hazards.pdf?VersionId=Jrg4w.CQSRMWfpsnNernXSSJcF5vZtFL.*

• The means to achieve the objective of the rule while minimizing adverse effects on competition, manufacturing, and commercial practices.

Id. 2058(f)(1).

Under section 9(f)(3) of the CPSA, to issue a final rule, the Commission must find that the rule is ''reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product'' and that issuing the rule is in the public interest. *Id.* 2058(f)(3)(A)&(B). Additionally, if a voluntary standard addressing the risk of injury has been adopted and implemented, the Commission must find that:

• The voluntary standard is not likely to eliminate or adequately reduce the risk of injury, *or*

• Substantial compliance with the voluntary standard is unlikely.

Id. 2058(f)(3)(D). The Commission also must find that expected benefits of the rule bear a reasonable relationship to its costs and that the rule imposes the least burdensome requirements that would adequately reduce the risk of injury. *Id.* 2058(f)(3)(E)&(F).

II. The Products

A. ROV

An ROV is a motorized vehicle designed for off-highway use, with these features: four or more wheels with tires designed for off-highway use; non-straddle seating for one or more occupants; a steering wheel for steering controls; foot controls for throttle and braking; and a maximum vehicle speed greater than 30 miles per hour (mph). ROVs are typically equipped with Rollover Protective Structures (ROPS), seat belts, and other restraints, such as doors, nets, and shoulder bolsters for the protection of occupants.

There are two distinct ROV varieties: utility-type ROVs and recreational-type ROVs. Models emphasizing utility have larger cargo beds, greater cargo capacities, and lower top speeds. Models emphasizing recreation have smaller cargo beds, lower cargo capacities, and higher top speeds. Both types of ROVs are included in the scope of the proposed rule.

B. UTVs

UTVs have physical characteristics like ROVs. However, UTVs generally have maximum speeds between 25 and 30 mph. UTVs are included in the scope of the proposed rule. Figure 1 shows a picture of typical Utility-Type ROV, a Recreational-Type ROV, and a UTV.

Figure 1. Left to Right: Typical Utility-Type ROV, Typical Recreational-Type ROV, and Typical UTV

III. Risk of Injury

A. Description of Hazard

ROVs and UTVs are intended to be driven off-highway and have all-terrain capabilities; typical uses include farm work, hunting, recreation, trail riding, and competitive racing. These vehicles are often driven in wooded areas or trails, where the vehicles can be expected regularly to be driven over tree branches and sticks.

Debris penetration involves debris (usually a tree branch or stick) cracking or penetrating the occupant area of an ROV or UTV. Debris penetration hazards are a comparatively greater concern for ROVs and UTVs because the wheel-well areas on these vehicles are generally larger and more open, compared to those of ATVs. In incidents, the debris usually cracks or penetrates through the floorboard of the underside of the ROV or UTV. When such penetration occurs, there is a potential for the branch or other debris to penetrate far enough into vehicle to harm occupants of the vehicle. As described in Section III.B of this preamble, debris penetration can occur even when the vehicle is being driven at low speeds.

B. Incident Data

1. Debris Penetration Recalls

There have been three debris penetration recalls, all associated with ROVs. CPSC recall data include the number of affected vehicles, number of incidents, and injuries associated with the recalls. ROV manufacturers generated the recall data; although there may be some overlap in the incidents, the ROV manufacturer data is separate and distinct from the data associated with CPSC Epidemiology staff's injury and death analyses in Section III.B of this preamble, and the data associated with the Engineering Sciences assessment, in Section IV.A of this preamble.

Collectively, over the period from 2014 through 2016, these three recalls consisted of approximately 55,000 recalled vehicles, 630 incidents of debris cracking or breaking through the floorboards, and 10 injuries. There were no deaths associated with ROV debris penetration hazards among these recalls.

2. National Electronic Injury Surveillance System (NEISS) and CPSC's Consumer Product Safety Risk Management System (CPSRMS) Data

CPSC Epidemiology staff reviewed NEISS injury cases and CPSRMS injury cases that occurred in the period from 2009 to 2021. Staff searched for debris penetration incidents involving ATVs, ROVs, and UTVs.

None of the debris penetration incidents involved an ATV (other than an ROV mischaracterized as an ATV). Given that ATVs do not have floorboards, the lack of debris penetration incidents involving ATVs was not unexpected. Because of this, ATVs are not included within the scope of the proposed rule.

Between 2009 and 2021, there were a total of 107 incidents found in CPSC databases involving debris penetration hazards; 104 of these incidents were found in CPSRMS, and 3 injury cases were found in NEISS. A previous search conducted for the ANPR, completed in spring 2021, returned 105 total incidents involving debris penetration hazards, consisting of 103 CPSRMS incidents and 2 NEISS injury cases.

Due to the small sample size of NEISS injury data, staff cannot estimate injuries.[2] Instead, for the debris penetration hazard scenario, staff counted the three injuries from NEISS with the other reported injuries from CPSRMS. Table 1 shows the yearly breakout of debris penetration hazards by data sources and severity of incidents.

TABLE 1—REPORTED INCIDENTS OF OHV DEBRIS PENETRATION HAZARDS BY YEAR

[CPSRMS: 2009–2021, NEISS: 2009–2020]

Year	Total incidents reviewed	Fatal reported incidents	Injury reported incidents	Non-injury incidents
Total	107	6	22	79
2009	1	0	1	0
2010	4	1	1	2
2011	3	0	1	2
2012	7	0	0	7
2013	8	0	2	6
2014	11	1	1	9
2015	8	1	3	4
2016	30	0	5	25
2017	27	2	2	23
2018	5	0	4	1
2019*	2	1	1	0
2020*	0	0	0	0
2021*	1	0	1	0

Sources: CPSRMS and NEISS.
* Data collection is ongoing.

Many of the 104 debris penetration incidents found in CPSRMS include multiple people riding in the OHV. However, for reports involving nonfatal injuries, only the age and/or gender of one or two of the victims is recorded. In reports received from manufacturers and retailers, which largely consist of non-injury incidents, basic victim demographic information is frequently not included at all.

Table 2 presents a broad overview of the distribution of the 107 debris penetration incidents by primary victims' age and gender. Forty-four of the 47 incidents with victim age missing are non-injury incidents; all 36 incidents with both victim age and gender missing are non-injury incidents as well.

TABLE 2—REPORTED INCIDENTS OF DEBRIS PENETRATION HAZARDS BY AGE AND GENDER

	Female	Male	Gender missing	Total
0–17 years	2	6	0	8
18–34 years	4	11	0	15
35–54 years	9	17	0	26
55+ years	0	11	0	11
Age Missing	1	10	36	47
Total	16	55	36	107

Sources: CPSRMS and NEISS.

CPSC field staff conducted in-depth investigations on the six fatal incidents. In all six fatal incidents, only one victim per incident died, as opposed to multiple fatalities per incident. Two incidents involved the death of a passenger, while the other four involved the death of the driver. Four involved a tree branch, one a large stick, and one a 2- to 3-inch piece of wood. At least three involved penetration of an occupant's chest.

The severity of the 22 nonfatal injury incidents due to debris penetration is presented in Table 3. The injuries ranged from mostly minor cuts, bruises and/or abrasions, to more severe injuries, like broken bones or debris impalement in the body. Most of the nonfatal injuries occurred in the lower area of the body (*e.g.,* ankles, legs, foot) or abdomen.

TABLE 3—REPORTED INCIDENTS OF DEBRIS PENETRATION HAZARDS BY INJURY SEVERITY

[2009–2020 NEISS, 2009–2021 CPSRMS]

Injury severity	Incidents
Treated and Released, or Released without Treatment	2
Hospital Admission	4
Emergency Department Treatment Received	3
First Aid Received by Non-Medical Professional	1
No First Aid or Medical Attention Received	2

TABLE 3—REPORTED INCIDENTS OF DEBRIS PENETRATION HAZARDS BY INJURY SEVERITY—Continued

[2009–2020 NEISS, 2009–2021 CPSRMS]

Injury severity	Incidents
Level of care not known	10
Total Injury Incidents	22

Source: CPSRMS and NEISS.

IV. Relevant Existing Standards

There are two voluntary standards associated with ROVs and UTVs: ANSI/ROHVA 1, *American National Standard for Recreational Off-Highway Vehicles,* and ANSI/OPEI B71.9, *American National Standard for Multipurpose Off-Highway Utility Vehicles.* A description of each standard follows.

A. ANSI/ROHVA 1 American National Standard for Recreational Off-Highway Vehicles

The Recreational Off-Highway Vehicle Association (ROHVA) developed ANSI/ROHVA–1 American National Standard for Recreational Off-Highway Vehicles, which sets mechanical and performance requirements for ROVs. The most recent version of ANSI/ROHVA–1 was published in 2016. The ANSI/ROHVA–1–2016 standard defines an ''ROV'' as a motorized off-highway vehicle designed to travel on four or more tires, intended by the manufacturer for recreational use by one or more persons and having the following characteristics:

- A steering wheel for steering control;
- Foot controls for throttle and service brake;
- Non-straddle seating;
- Maximum speed capability greater than 30 MPH;
- Gross Vehicle Weight Rating (GVWR) no greater than 1,700 kg (3,750 lbs);
- Less than 2,030 mm (80 in) in overall width;
- Engine displacement equal to or less than 1,000 cc for gasoline fueled engines;
- Identification by means of a 17-character PIN or VIN.

The standard addresses design, configuration, and performance aspects of ROVs, including requirements for accelerator and brake controls; service and parking brake/parking mechanism performance; lateral and pitch stability; lighting; tires; handholds; occupant protection; labels; and owner's manuals. The latest version of the standard adds vehicle handling requirements and enhanced seat belt reminder requirements to address rollover and occupant ejection hazards associated with ROVs. ANSI/ROHVA 1–2016 does not have requirements to address debris penetration into the occupant area of the vehicle.

ROHVA member companies include Textron (formerly known as Arctic Cat), Bombardier Recreational Products (BRP), Honda, John Deere, Kawasaki, Polaris, and Yamaha. Work on ANSI/ROHVA–1 started in 2008; work was completed with publication of ANSI/ROHVA 1–2010. The standard was immediately opened for revision, and a revised standard, ANSI/ROHVA 1–2011, published in July 2011. The most recent version was published in 2016.

B. ANSI/OPEI B71.9 American National Standard for Multipurpose Off-Highway Utility Vehicles

Some ROV manufacturers that emphasize the utility applications of their vehicles worked with the Outdoor Power Equipment Institute (OPEI) to develop ANSI/OPEI B71.9 American National Standard for Multipurpose Off-Highway Utility Vehicles. The most recent edition of the OPEI standard was published in 2016. ANSI/OPEI B71.9 defines a ''multipurpose off-highway utility vehicle'' (MOHUV) as a vehicle having features specifically intended for utility use and having these characteristics:

- Intended for transport of one or more persons and/or cargo, with a top speed in excess of more than of 25 mph;
- Overall width of 2,030 mm (80 in) or less;
- Designed to travel on four or more wheels, two or four tracks, or combinations of four or more wheels and tracks;
- Use of a steering wheel for steering control;
- Equipped with a non-straddle seat;
- Gross Vehicle Weight Rating of no more than 1,814 kg (4,000 lbs.); and
- Minimum cargo capacity of 159 kg (350 lbs.).

The Commission considers MOHUVs with maximum speed capabilities between 25 and 30 mph to be ''UTVs.'' The Commission considers MOHUVs with maximum speed capabilities greater than 30 mph to be ROVs. The OPEI standard includes requirements for accelerator and brake controls; service and parking brake/parking mechanism performance; lateral and pitch stability; lighting; tires; handholds; occupant protection; labels; and owner's manuals. The latest version of the OPEI standard added vehicle handling requirements and enhanced seat belt reminder requirements (that are identical to the requirements in ANSI/ROHVA 1–2016) for vehicles with maximum speeds greater than 30 mph to address rollover and occupant ejection hazards associated with ROVs. ANSI/OPEI B71.9–2016 does not have requirements to address debris penetration into the occupant area of the vehicle.

OPEI member companies include Honda, John Deere, Kawasaki, and Yamaha. Work on ANSI/OPEI B71.9 was started in 2008, and it was completed with the publication of ANSI/OPEI B71.9–2012 in March 2012. The most recent version was published in 2016.

C. CPSC Staff Voluntary Standard Activity

In a September 2018 meeting with ROHVA and OPEI, CPSC staff discussed the largest of the ROV debris penetration recalls involving 628 manufacturer reports of debris cracking or penetrating through the floorboards and 8 injuries. Staff recommended that OPEI and ROVHA form task groups to study the ROV debris penetration issue. In subsequent meetings, CPSC staff discussed the debris penetration hazard recalls and redacted debris penetration in-depth investigation (IDI) reports with ROHVA and OPEI. At the most recent meeting on April 1, 2022, OPEI and ROHVA members shared exploratory work on test methods to evaluate debris penetration hazards and expressed an interest in collaborating with CPSC staff on the issue. The voluntary standard activity is ongoing; however, there are currently no ballots that address the debris penetration hazard or timetable from either organization.

V. CPSC and SEA Technical Analysis

A. CPSC Staff Analysis of IDIs

Engineering Sciences staff examined 53 IDIs,[3] which included the 8 IDIs examined in detail in the ANPR and 45 IDIs examined post ANPR. Many IDIs contained information for the estimated vehicle speed at the time of the accident and the estimated stick diameter.[4]

Fifty-one IDIs involved tree branches penetrating the floorboards, whereas two of the IDIs involved rocks breaking through the floorboards. All the IDIs involved ROVs, except one, which involved a UTV. Debris penetrations occurred two or more times for a single

[3] Out of the 107 incidents, 53 incidents had corresponding in-depth-investigations IDIs.

[4] ''Table 1—Debris Penetration IDI Summaries,'' in section II.B of the memorandum from the Division of Mechanical and Combustion Engineering, ''Proposed Requirements for Mitigating the Debris Penetration Hazards Associated with Recreational Off-Highway Vehicles (ROVs) and Utility Task/Terrain Vehicles (UTVs),'' summarizes details from the 53 IDIs.

vehicle for some consumers, as described in seven of the IDIs.

Thirty-three IDIs had information regarding stick diameter. For those IDIs that had information regarding stick diameter, death or injury occurred from a stick with a diameter between 1 to 3 inches. Forty-one IDIs had information regarding the estimated vehicle speed at time of impact. For those incidents involving debris penetration from wood, the estimated vehicle speed ranged from 2 mph to 25 mph.

IDI interviewees in their responses sometimes gave ranges to estimate stick diameters and vehicle speeds. For example, an interviewee believed a stick that penetrated the floorboard was approximately 1 to 1.5 inches. The average stick diameter for the low range was 2.1 inches and 2.5 inches for the high range.

For estimated vehicle speeds, the average speed for the low range was 10.2 mph and 12.1 mph for the high range. Most of the interviewees, 66 percent (27 out of 41 IDIs), reported debris penetrations occurring at 10 mph or less.

In two IDIs where the estimated speed was 5 mph, two consumers experienced injury to their shin and foot. Only one incident included estimated vehicle speeds greater than 25 mph.

Given that ROVs/UTVs are used in forested trails, it is reasonable to expect that the floorboards should protect consumers when ROVs/UTVs are operating at speeds of 10 mph or less in these environments.

Staff measured the floorboards of several model ROVs and determined that the average thickness of the plastic floorboards was between 0.1 and 0.2 inches. In addition, staff's analysis of incident photos indicates brittle failure (*i.e.,* where the material does not stretch) of the plastic floorboard when penetration occurred, because the floorboard was not able to absorb the high kinetic energy of the floorboard-stick collision. Edges of the holes or cracks are usually clean (*i.e.,* no material stretch indications).

B. Debris Penetration Testing

The Commission contracted with SEA Ltd. (SEA), to conduct debris penetration testing with a remotely operated robotic ROV and a ROV mock-up sled that can move on a linear track. The purpose of SEA's testing was to quantify the speed and energy necessary for debris, *e.g.,* a stick or a branch, to penetrate a ROV floorboard. SEA conducted debris penetration testing with a remotely operated robotic ROV and also conducted controlled laboratory tests with mock-up ROVs on SEA's sled facility. Although SEA's study was conducted on ROV models, because the floorboard and UTV front architectures are similar, and in some cases, the same as ROV models, the concepts, observations, and discussions related to ROVs are equally applicable to UTV models.

As part of SEA's analysis, SEA reviewed debris penetration IDIs provided by CPSC staff. SEA determined that a common pattern in most of the severe injury accidents was that a branch or stick, generally, 1 to 2 inches in diameter, penetrated through the vehicle floor, particularly in the foot rest/wheel well areas. Typically, the stick was longitudinal to the vehicle, and positioned at an upward angle. The end of the stick closest to the vehicle was high enough to get above or between the front suspension components of the vehicle. The end of the stick farther from the vehicle was either attached to a larger piece of wood or embedded in the ground. SEA observed that sticks penetrating the vehicle's occupant space were generally straight, and could have diameters as high as 5 inches, or as small as 1¼ inches. Occupants experienced chest/abdomen impalements or impalements/lacerations to lower extremities.

SEA's initial testing consisted of a remotely operated robotic ROV that was driven into a stationary dowel [5] at 10 mph, as shown in Figure 3. SEA conducted two tests with a remotely operated robotic ROV to examine the specifics of a debris penetration event. SEA determined that a dowel could contact the metal frame members that can influence the trajectory of the dowel and the way the dowel penetrates the floorboard. Contact in this manner would allow the dowel to experience both compressive and bending forces. The bending forces caused the dowel to snap after impact when the robotic ROV was traveling at 10 mph, as shown in Figure 2.

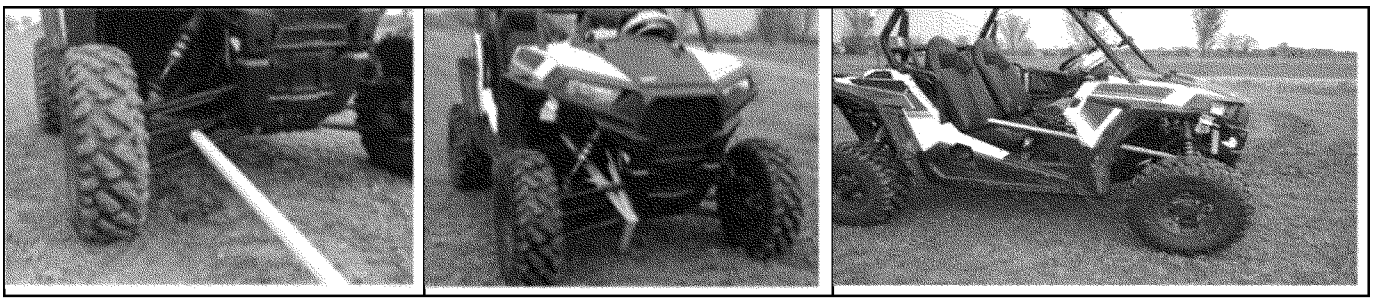

Figure 2 – Multiple Views of the Robotic ROV involving Collision at 10 mph; Left – Alignment of the Test Dowel with Test Target on the ROV Floorboard; Middle – Front View of Broken Dowel; Right – Side View of Test Dowel that Entered the ROV Passenger Occupant Area

[5] SEA used a 2-inch diameter oak dowel between 39 inches to 65 inches long for the sled testing. Oak is a hardwood with a relatively high modulus of rupture and modulus of elasticity material properties. A 2-inch diameter oak dowel is a mass-produced item that is readily available. Use of a consistent test component will minimize test-to-test variability.

The second series of testing consisted of a ROV mock-up sled, fitted with OEM floorboards and aftermarket floorboard guards, as shown in Figure 3.

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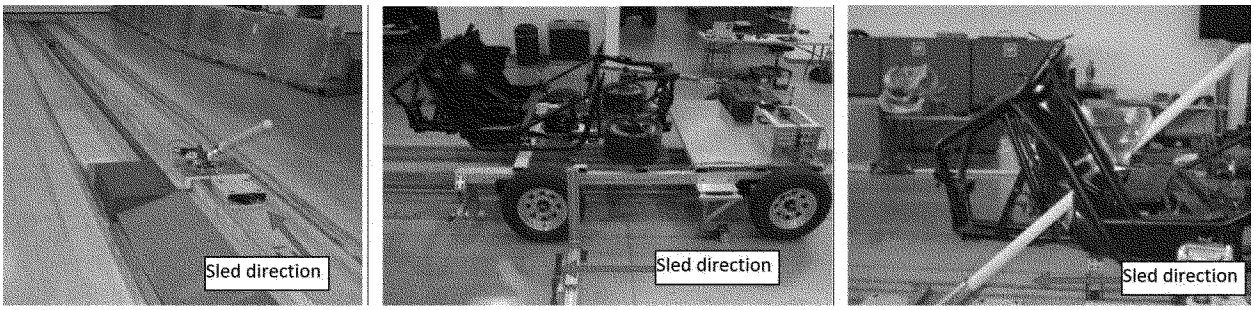

Figure 3 – Multiple Views of the Simulated Vehicle Test Sled; Left – Test Dowel in Relation to the Direction of the Test Sled; Middle – Side View of an Example of a Fully Loaded Test Sled; Right – Side View of a Sled Test Where the Test Dowel Penetrated the ROV Floorboard

Both test methods allowed the robotic ROV or the ROV sled to collide with a stationary dowel. The full-scale robotic ROV test showed similar penetration location and puncture characteristics for the sled test (see Figure 4). Both test methods resulted in a dowel penetration through the seam area between the floorboard and firewall [6] sections. By performing these engineering tests, SEA quantified the speeds and energies required to puncture the floorboards and floorboard guards.

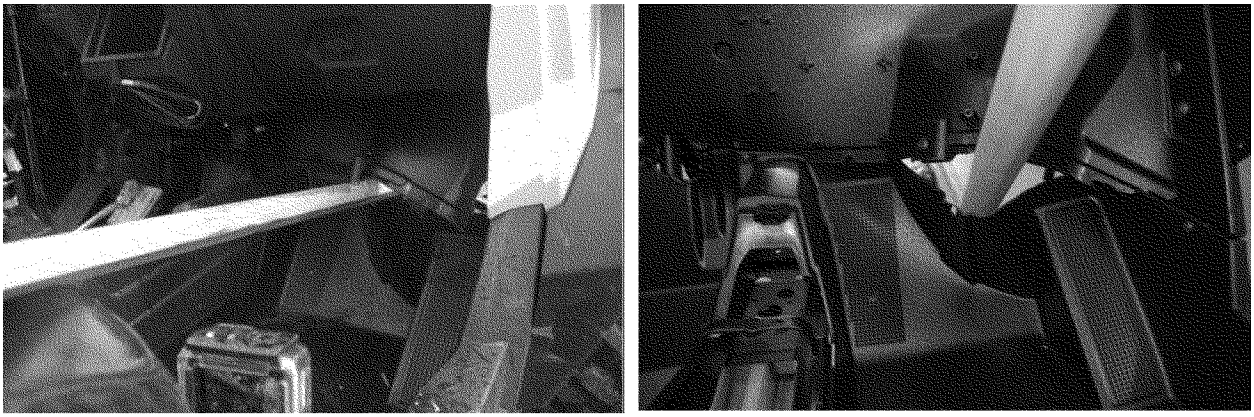

Figure 4 – Comparison of Full-Scale Robotic ROV Test and Sled Test; Left – Robotic ROV Test Where Dowel Penetrated the Seam that Joins the Floorboard and Firewall Panels; Right – Sled Test Where the Dowel Penetrated the Seam that Joins the Floorboard and Firewall Panels

Floorboards and aftermarket floorboard guards from five ROV manufacturers were tested using the sled method. SEA conducted a total of 21 test trials. SEA used sled speeds of 2.5, 5, and 10 mph.

The sled tests showed that the stock floorboards for two ROV manufacturers experienced debris penetrations at 2.5 mph. The stock floorboards for all five ROV brands experienced debris penetration at 5 mph. Figure 5 illustrates a stock floorboard that experience debris penetration at 2.5 mph.

[6] On many ROVs/UTVs, there are two plastic floor panels. The main floorboard panel covers the floor and footwell areas in front of the feet. A second, semi-vertical plastic panel that is joined to the main floorboard is often known as the firewall, which is located higher up, at the knee level and above.

Figure 5 – Interior View, Driver's Side Floorboard Where Debris Penetration Occurred at 2.5 mph

SEA tested various branded aftermarket metal and plastic floorboard guards to gauge their material strength properties to resist debris penetration. Among the 21 test trials, a metal guard for one brand of ROV did not have debris penetration at 10 mph. Two test trials at 5 mph with metal guards and one test trial with a plastic guard at 5 mph did not have debris penetration. All other test trials with plastic or metal guards failed at 10 or 5 mph.

For tests that did not experience debris penetration, the test dowel was redirected, or the dowel slid off to the side or upwards. In such cases, the bending forces caused the dowel to snap off. In some instances, the sled yawed and pitched before the sled came to a complete stop. These actions accomplished the guards' goal of protecting the occupants from the debris penetration hazard. Figure 6 illustrates an aluminum floorboard guard with a black powder coated paint surface that prevented debris penetration at 5 mph. The test sled pitched and yawed, while the tip of the dowel slightly dented, then scraped the floorboard guard's surface and slid to the right before the test sled came to complete stop.

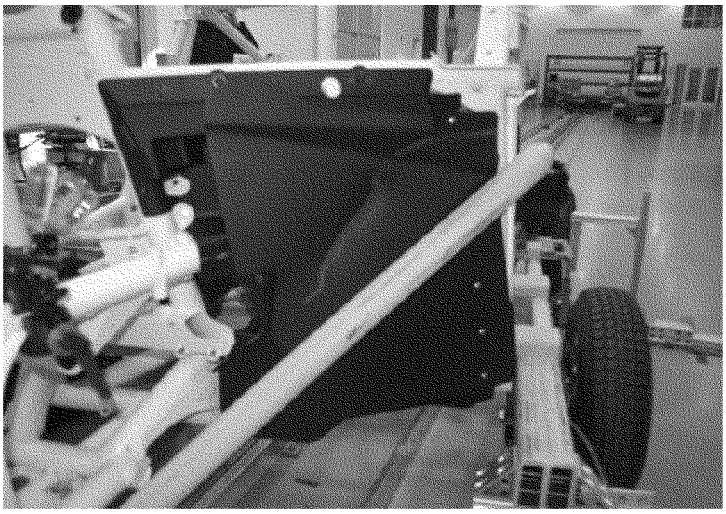

Figure 6 – Illustration of an Aluminum Floorboard Guard that Redirected the Test Dowel and Prevented Debris Penetration (at 5 mph)

SEA staff procured the aftermarket guards from multiple online vendors. The existence of a market for these guard products suggests there is a need for enhanced protection against debris penetration. CPSC is aware of products in the marketplace that can resist debris penetration, and these retrofit products offer additional protection when compared to stock floorboards that can experience debris penetration at speeds as low as 2.5 mph.

From its testing, SEA concluded:

- If better guards are to be designed, it is likely that they will not work by absorbing energy, but rather, by redirecting the dowel, or breaking it off.

• Guards that worked well in the sled testing tended to work well because they pushed the dowel up and/or to the side. Ideally, the guards would push the stick all the way to the side of the vehicle and outside the zone of the occupant compartment.

• Testing showed that a successful design for an aftermarket guard or OEM floorboard could involve deflecting the dowel, rather than taking on the force directly. Several of the aftermarket guards were successful at doing this at 5 mph, and one of the guards tested was successful at 10 mph.

The test dowel did not break in testing that involved a metal floorboard guard that was sturdy enough to prevent debris penetration at 5 mph. The test dowel deformed the floorboard guard in a scraping manner without puncturing the floorboard guard, and the test sled pitched and yawed before coming to a full rest. However, the test dowel did break at 10 mph for this same metal floorboard guard, due to the bending forces being greater when the test sled speed was doubled. If a floorboard or floorboard guard is sturdy enough, there will be a greater tendency for the floorboard or floorboard guard to deflect the dowel and increase the dowel's bending forces when the test sled speed is at 10 mph or higher. Thus, a floorboard or floorboard guard that can prevent debris penetration at 10 mph will likely prevent debris penetration at speeds above 10 mph.

The requirements and test procedure of the proposed rule are in Section VI of this preamble.

VI. Proposed Requirement, Test Procedure, and Prohibited Stockpiling

A. Proposed Requirement

ROVs and UTVs equipped with current ROV/UTV floorboards offer minimal to no protection to the occupants in debris penetration events. Stick/branch penetration of floorboards poses impalement and/or laceration hazards and the risk of serious injury or death. SEA's sled testing showed that dowel penetration can occur at speeds as low as 2.5 mph on ROVs equipped with standard OEM floorboards. Multiple full-scale tests re-created stick/branch penetration in the occupant area, a hazard reported in at least 107 incidents, 6 resulting in fatalities.

To reduce deaths and injuries associated with the debris penetration hazards, the Commission is proposing a performance requirement and a test procedure that propels a test vehicle or simulated vehicle sled at a minimum speed of 10 mph towards a stationary 2-inch diameter oak dowel, positioned at an angle between 12° and 25°, to strike the front wheel suspension area of the vehicle. The performance requirement specifies that the dowel cannot penetrate the occupant area when tested to the proposed impact test procedure.

For the majority of the IDIs that had vehicle speed information, 66 percent (27 out of 41 IDIs), of the debris penetration events occurred at 10 mph or less. A test vehicle or simulated vehicle sled colliding with a stationary 2-inch diameter oak dowel at 10 mph represents a realistic debris penetration scenario. The requirement will reduce the likelihood of impalement and/or lacerations from debris penetration, by preventing penetration into the occupant area of these vehicles. The SEA testing showed that an aftermarket floorboard guard can prevent debris penetration at 10 mph. Instead of energy absorption, the aftermarket guard redirected the dowel, allowing the bending forces to snap the dowel. It is likely that floorboards or the wheel-well area of ROVs/UTVs can be designed to resist debris penetration by redirecting the dowel to the side or upwards to avoid injuring the occupants. This type of mitigation design would also be effective at higher vehicle speeds.

B. Test Procedure

1. Load Condition

The test protocol requires a load condition of 430 lbs for a two-seat ROV or UTV model. The 430 lbs represents a driver and a front seat passenger, each equivalent to a 95th percentile male (215 pounds). For a four-seat model, the load condition requirement is 860 pounds, representing the driver and three passengers. For a six-seat model, the load condition is 1290 lbs, representing the driver and five passengers. Models containing these minimum load weights are described below as ''fully loaded.''

2. Test Vehicle or Simulated Vehicle Sled Conditions

The fully loaded test vehicle is to be fitted with the test floorboard and/or floorboard guard(s), as offered for sale. If a simulated vehicle sled is used, such that a ROV/UTV front metal frame is fitted with the test floorboard and/or floorboard guard(s), the simulated vehicle sled must be able to translate on a linear track that can propel the simulated vehicle sled to at least 10 mph.

3. Test Speed

The test vehicle or simulated vehicle sled speed, in miles per hour (mph), must be at least 10 mph at the moment of impact.

4. Test Location

The test dowel is to be positioned at an angle between 12° and 25° such that it will strike the upper wheel well area of the vehicle. The target of the test dowel must be either the floorboard or floorboard guard surface of the vehicle, and it must be the point on the floorboard or floorboard guard most likely to produce the most adverse results, such as a seam, crease, catch point, or bend.

5. Test Equipment

The test procedures prescribe the diameter (2-inches) and length of the dowel (between 39 to 65 inches) and the angle in which the dowel is to be installed in the dowel holder (between 12° to 25°). A range of angles and a range of dowel lengths are necessary, due to the various shapes, depths, contours, suspension component arrangements, and control arm dimensions of all the ROV/UTV wheel-well configurations. See Figure 7.

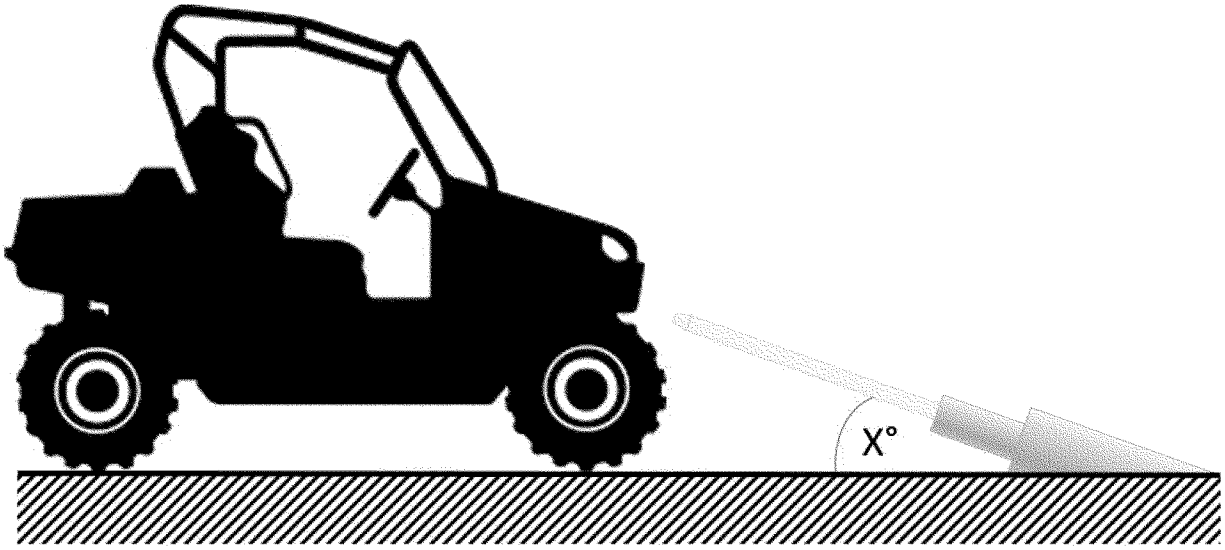

Figure 7-– Illustration of Debris Penetrator Test Dowel Orientation

The test procedure also requires that the tip of the dowel be tapered, such that the tip surface diameter is 1 inch, and the tip cone length is 1 inch. See Figure 8.

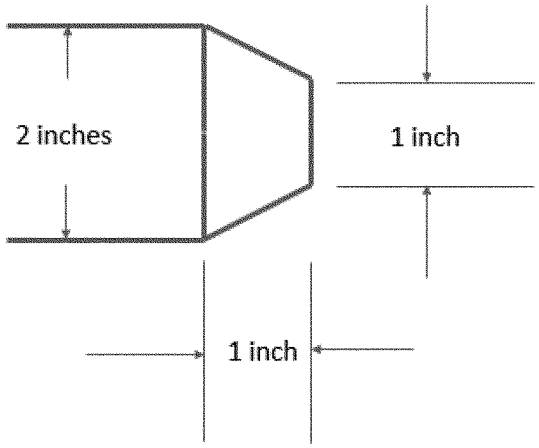

Figure 8 – Illustration of Debris Penetrator Test Dowel Tip Taper

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The dowel holder must be constructed of a rigid material, such that the dowel holder will not fracture during the course of the impact test.

A vehicle or simulated vehicle sled braking system and/or energy absorption foam blocks located two feet past the debris penetration dowel holder are recommended to minimize damage to test equipment. If a braking system is used, it is only permitted to activate after the vehicle or simulated vehicle sled collides completely with the debris penetrator dowel.

6. Test Conditions

If a test vehicle is used, the test surface must be dry asphalt or dry concrete that is free of contaminants. There must be sufficient track length available to allow the test vehicle or simulated vehicle sled to reach 10 mph. The test surface must be flat and have a grade slope of 1.7 percent (1°) or less. The ambient temperature shall be greater than 0 °C (32 °F).

7. Test Procedure

In the test procedure, a fully loaded, fully instrumented test vehicle or simulated vehicle sled is propelled in a straight-line path to collide with the test dowel, where the test vehicle or

simulated vehicle sled speed is at least 10 mph at the moment of impact. A minimum of two test trials of one chosen test method must be conducted for each vehicle model.

8. Rationale—Test Conditions

The required ambient temperature of 0 °C (32 °F) or greater, maximum allowable flat course slope grade of 1.7% (1°) or less, the maximum allowable wind speed of 11.2 mph (18 km/h), flat dry asphalt or dry concrete conditions, and the 95th percentile male weight are consistent with the lateral stability requirements of ANSI/OPEI B71.9–2016 and ANSI/ROHVA–1–2016, simulate real use, and allow for repeatable test results.

C. Prohibited Stockpiling

The proposed rule includes an anti-stockpiling provision that would prohibit manufacturers and importers from stockpiling products that will be subject to the mandatory rule. The Commission's authority to issue an anti-stockpiling provision is in section 9(g)(2) of the CPSA. 15 U.S.C. 2058(g)(2). The anti-stockpiling provision would prohibit ROV and UTV manufacturers and importers from manufacturing or importing ROVs or UTVs that do not comply with the requirements of the proposed rule between the date of the final rule publishing in the **Federal Register** and the effective date of the rule, at a rate greater than 105 percent of the rate at which they manufactured or imported ROVs or UTVs during the *base period* for the manufacturer.

The *base period* is described in the proposed rule as the calendar month with the median manufacturing or import volume within the last 13 months immediately preceding the month of promulgation of the final rule. ''Promulgation'' means the date the rule is published in the **Federal Register**.

VII. Response to Comments

The Commission published the Off-Highway Vehicle (OHV) Fire and Debris Penetration Hazards Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** on May 11, 2021. The public comment period ended on July 12, 2021. CPSC received 10 comments from the public, which can be found under docket number CPSC–2021–0014, at: *www.regulations.gov.* Four of the comments support the rulemaking; six of the comments do not support the rulemaking. We respond to the comments pertaining to debris penetration hazards here.

Comment: Four comments express support for the rulemaking. Three of these comments (American Academy of Pediatrics, Kids in Danger, and Public Citizen) state that voluntary standards for ROVs and UTVs fail to adequately protect consumers, given the injuries, deaths and incidents that have occurred related to debris penetration. In addition, these three comments note that the voluntary standards do not include any requirements to protect against debris penetration. Kids in Danger further asserts that research shows a correlation between mandatory standards on products and a reduction of regulated product-specific deaths.

Response: Staff concurs with these comments, because the current voluntary standards, ANSI/ROHVA–1–2016 and ANSI/OPEI B71.9–2016, do not have resistance to debris penetration performance requirements that adequately protect consumers, given the injuries, deaths, and incidents that have occurred related to debris penetration.

Comment: The American Academy of Pediatrics suggests that the rulemaking should account for the unique hazards of OHVs used by children, especially for ''youth model'' products marketed toward younger drivers.

Response: At least one ROV manufacturer offers youth-oriented ROVs that are smaller versions of the full-size ROVs. These vehicles will be treated in the same manner as other OHVs. If they meet the definition of ROV or UTV, then they are within the scope of the proposed rule.

Comment: ROHVA and two individuals, Mark Strauch, and Steve Tavara, state that it is not clear whether the debris penetration hazard incidents identified in the ANPR were caused by lack of clear sight, user error, or whether the driver and/or passenger were impaired in some fashion. Mark Strauch also states it is unclear whether ROVs are becoming dangerous due to ''improper installation, inspection, operation, and/or maintenance.''

Response: Staff examined incident data that showed that debris penetrations occur at speeds as low as 2 mph. For 44 percent of the IDIs that had information regarding vehicle speed at the time of debris penetration, the vehicle speeds during collisions with tree branches were 5 mph or less. These data suggest that consumers were generally not reckless, and the ROV/UTV floorboard debris penetrations are occurring under non-severe conditions. Consequently, staff concluded that there was an issue with the vehicle itself rather than the operator's behavior or maintenance of the vehicle. By their nature, ROVs and UTVs are intended to be driven on off-highway environments. It is foreseeable that in an off-highway environment, a vehicle might encounter sticks or branches. Penetration of a stick/branch into the vehicle's cabin area, even at such low speeds, is indicative of insufficient debris resistance of the vehicle. Staff assesses that a vehicle intended to be driven in off-highway environments should not be susceptible to debris penetration at such low-speeds, regardless of maintenance or inspection of the vehicle.

Comment: Commenters ROHVA, OPEI, SVIA, and Polaris, Inc. (''Polaris''), advocate addressing debris penetration hazards through the voluntary standards process instead of through rulemaking.

Response: Although CPSC staff has engaged with the standards development organizations (''SDOs'') on this topic for years, no substantial progress has been made regarding debris penetration hazards. Since 2018, the three SDOs and CPSC staff met multiple times to discuss debris penetration hazards, but no substantial progress has been made, and discussions remain in the preliminary idea phase. CPSC staff will continue to engage with these SDOs, to review any proposals they may present, and consider those proposals as CPSC continues with its rulemaking activities.

Comment: ROHVA, Polaris, and Mark Strauch assert that the Commission should withdraw its ANPR because it lacks sufficient information to determine that there is an ''unreasonable risk of injury'' associated with debris penetration hazards. ROHVA asserts that debris penetration incidents are rare and involve ''highly dissimilar factors,'' making them unsuitable for consideration for mandatory rulemaking.

Response: Staff disagrees that debris penetration incidents are rare. CPSC staff has determined that 6 deaths and 22 injuries resulted from ROV debris penetration. There were 107 debris penetration incidents involving ROVs or UTVs in CPSC databases. Manufacturers reported 632 debris penetration incidents related to three different recalls.[7]

Staff also disagrees with the notion that debris penetration incidents involve ''highly dissimilar factors,'' such that a mandatory rule would be ineffective. The incidents show that a consistent factor in debris penetration incidents is the penetration of debris into the floorboard of the vehicles when they are being driven, as marketed and intended, in off-road environments,

[7] The manufacturer-reported data is separate and distinct from the data from CPSC databases; there may be some overlap between the two.

even at low-speeds. The proposed test requirement would address the inadequacy of the floorboards to protect occupants in the vehicle. CPSC contractor SEA procured aftermarket floorboard guards from seven different vendors for their test program. The fact that there is already a robust market for aftermarket floorguards suggests that, contrary to being rare, debris penetrations are occurring often enough that there is substantial consumer interest in products to potentially remedy the risk of debris penetrations.

Comment: ROHVA comments that it is inaccurate to characterize the 630 manufacturer reports associated with the three debris penetration recalls as ''debris penetration incidents,'' because not all of the incidents involved debris penetration *through* the floorboard. ROHVA notes that the press release for the largest of the three recalls states that there were ''628 incident reports of debris cracking or breaking through the floor boards.''

Response: The manufacturer reports consisted of floorboards either cracking or breaking during normal operation due to impact with, or penetration by, debris from outside the vehicle. Whether or not the debris penetrated through the floorboard, staff considers the cracking or breaking of the floorboards by objects during normal operation of the vehicle to be indicative of a penetration hazard.

VIII. Preliminary Regulatory Analysis

A. Introduction

Pursuant to section 9(c) of the Consumer Product Safety Act, publication of a proposed rule must include a preliminary regulatory analysis containing:

- A preliminary description of the potential benefits and potential costs of the proposed rule, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs.
- A discussion of the reasons why a standard submitted to the Commission in response to the ANPR was not published as the proposed rule.
- A discussion of why a relevant voluntary safety standard would not eliminate or adequately reduce the risk of injury addressed by the proposed rule.
- A description of any reasonable alternatives to the proposed rule, together with a summary description of their potential costs and benefits and why such alternatives should not be published as a proposed rule.

The primary focus of this preliminary regulatory analysis is the Commission's preliminary assessment of potential benefits and costs from the proposed rule. CPSC staff estimates benefits by subtracting the expected societal costs (*i.e.,* deaths and injuries from floorboard debris penetration), assuming the rule has been implemented, from the expected societal costs in the absence of the rule (or baseline scenario). Estimated costs include costs to industry from implementing a ROV/UTV fix that addresses the debris penetration hazard, the costs associated with government oversight and compliance monitoring, and the deadweight losses that are the measured impacts to consumers and producers displaced from the ROV/UTV market because of a potential price increase. CPSC staff estimated benefits and costs over a 30-year period starting in 2024, which is the year that the rule would go into effect. A 30-year period allows for several cycles of useful life for ROVs and UTVs and ensures the assessment accounts for the long-term effects of the proposed rule. Staff presents all estimates in 2021 dollars. To account for the time value of money, staff applied an annual 3 percent discount rate to forecasted benefits and costs. The preliminary regulatory analysis also explains why voluntary safety standards would not eliminate or adequately reduce the risk of injury addressed by the proposed rule. It describes alternatives to the proposed rule and their potential costs and benefits, and it explains why these alternatives should not be published as a proposed rule. In addition, although the ANPR invited commenters to submit standards for publication as the proposed rule, or part of the proposed rule, no standard was submitted during the ANPR comment period, and thus, no standard was available for the Commission to consider.

B. Market Information

1. Retail Prices

In 2019, ROV and UTV manufacturers' suggested retail prices (MSRP) ranged from a minimum of $4,599 to a maximum of $53,700. When weighted by sales volume, the mean MSRP is $13,182 for ROVs and UTVs,[8] which, in 2021 dollars, equates to $14,302. As shown in Figure 8, before 2013, the average ROV and UTV MSRP showed a downward trend. However, beginning in 2013, the average ROV and UTV MSRPs have increased steadily. This trend appears to be driven by increasing sales of more expensive models with higher maximum MSRPs. Figure 9 displays MSRPs for ROVs and UTVs from 2004 through 2019, in constant 2021 dollars.

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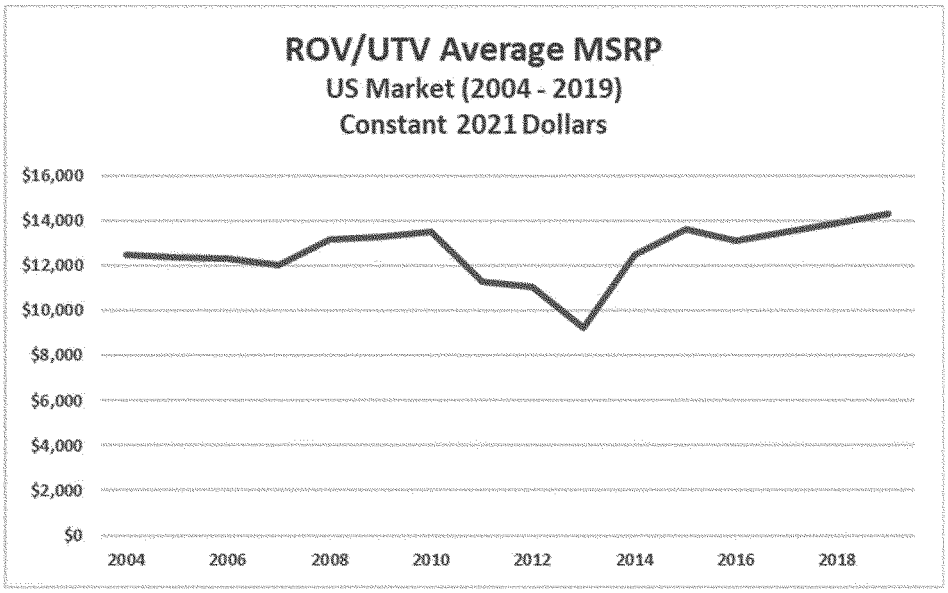
[8] Unless otherwise noted, the ROV/UTV product and market information is based on CPSC staff analysis of 1998–2019 sales data provided by Power Products Marketing, Eden Prairie, MN (2020).

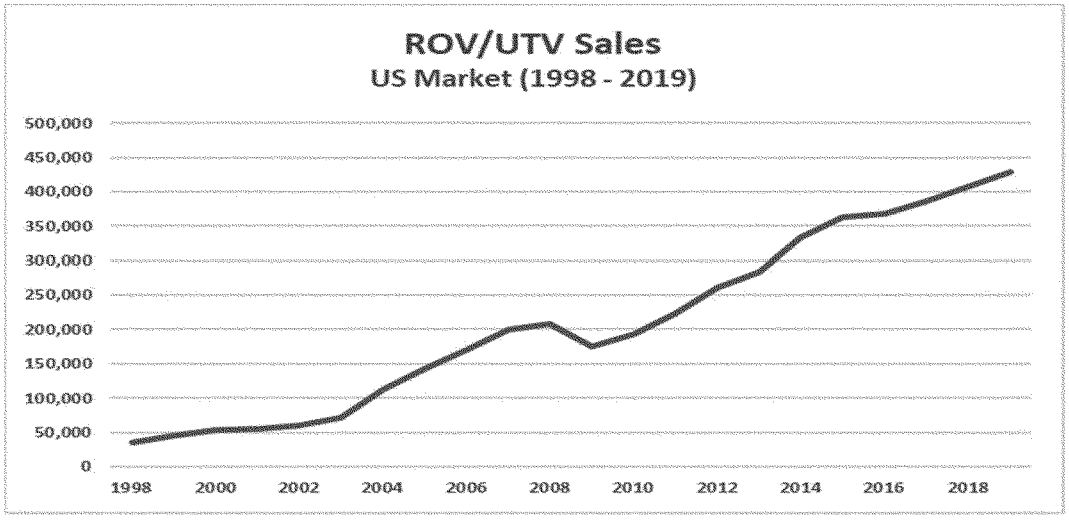
Figure 9: ROV & UTV Average MSRP



1. Annual Sales and Shipments

Except for 2009, annual sales of ROVs and UTVs in the United States have increased steadily, from an estimated 35,041 units in 1998, to an estimated 429,135 units in 2019. Figure 10 illustrates combined ROV and UTV unit sales from 1998 through 2018.

Figure 10: Unit Sales of ROV/UTVs from 1998 to 2018



Staff identified 35 manufacturers known to have supplied ROVs and UTVs to the U.S. market in 2019: 17 from the United States, 14 from China (including Taiwan), and one each from Canada, Mexico, South Korea, and Spain. Additionally, there are 48 distributers/brands. Staff estimated U.S. manufacturers accounted for approximately 83 percent of U.S. ROV and UTV sales in 2019, and that current members of ROHVA and/or OPEI accounted for approximately 95 percent of U.S. ROV and UTV sales in 2019.

Staff identified 461 different ROV and UTV model variants and configurations sold in the United States in 2019. Excluding variants and configurations that appear to be based on a common base model, staff estimated that there may be as few as 107 unique models introduced in 2019, and they estimated a total of 672 models in use by consumers.

2. Estimated ROV and UTV Units in Use

Staff estimates there were 2.34 million ROVs and UTVs in use in the United States in 2019. The Commission developed this estimate based on the number of sales of ROV and UTV in prior years, and then designated a product life (in years) to each unit sold. The distribution of product life years for ROVs and UTVs informs the analysis of what proportion of units will last above or below its average product life. For example, the average product life for an

ROV/UTV is 6 years. Therefore, a plurality of ROVs/UTVs will be in use for 6 years, but some ROVs/UTVs will be in use less than the expected 6 years, while others will be in use longer than 6 years. The distribution of product life informs this analysis of what proportion of sold units will fall into each amount (in years) of product life. This process helps assess how many ROVs/UTVs are still in use, given any number of years after they are sold.

C. Preliminary Regulatory Analysis: Benefits Assessment

This section presents the potential benefits associated with implementing the performance requirement from the proposed rule for mitigating debris penetration hazards associated with ROVs and UTVs.

1. Benefits Assessment Methodology

The Commission conducted the preliminary regulatory analysis from a societal perspective that considers significant costs and health outcomes. The Commission captured expected reduction in societal costs by estimating the number of deaths and injuries from debris penetration that would be prevented by the proposed rule. The Directorate for Epidemiology (EP) retrieved casualties reported through NEISS, a national probability sample of U.S. hospital emergency departments (ED), and the CPSRMS database of consumer incident reports. Staff then forecasted the number of expected reported deaths and injuries for a 30-year study period and converted the value of prevented deaths and injuries into monetary terms using the Value of Statistical Life (VSL) for deaths and CPSC's Injury Cost Model (ICM) for injuries.

Staff used a 30-year study period to assess the benefits of the proposed rule. Staff assumed, for the purpose of this analysis, that the rule will go into effect at the beginning of 2024; this results in a study period of 2024 through 2053. A 30-year period allows for several cycles of useful life for ROVs and UTVs and ensures the benefits assessment accounts for all long-term effects from the proposed rule. Staff then converted the aggregate benefits over the 30-year study period into annualized and ''per-product'' outputs. An annualized output converts the aggregate benefits over 30 years into a consistent annual amount while considering the time value of money. This metric is helpful when comparing the benefits among different rules or policy alternatives that may have different timelines; or those that have similar timelines, but benefits for one are front-loaded, while the other's benefits have a latent effect. A per-product metric expresses the benefits from the rule in one unit of product. This metric is helpful when assessing the impact in marginal terms; for example, comparing benefits to an increase in retail price or marginal increase in cost of production per-unit.

2. Deaths and Injuries Over the 30-Year Study Period

CPSC staff identified six deaths and 22 nonfatal injuries that occurred from 2009 through 2021, related to debris penetration incidents involving occupants. Of the 22 nonfatal injuries, four required hospital admission, three resulted in ED treatment, two were treated and released, or released without treatment, one received first aid by a non-medical professional, and two received no treatment. The level of care provided for the remaining 10 incidents is not known. CPSC staff gathered these casualties from NEISS (three nonfatal incidents) and CPSRMS (the remaining incidents) and confirmed there was no overlap.

Next, staff used the incident data on debris penetration from NEISS and CPSRMS to forecast the number of injuries from debris penetration treated in EDs and other settings throughout the 30-year study period. Typically, the Commission would use reported injuries from NEISS, which only records injuries from a sample of U.S. hospitals, and then the Commission would extrapolate the data into a national estimate. However, the number of recorded incidents of debris penetration from the sample hospitals was lower than the publication criteria established in NEISS. Therefore, staff could not develop a national estimate and had to estimate the benefits using a forecast of reported injuries from the sample hospitals only. There are likely many more unreported incidents outside of the sample hospitals not accounted for in this analysis, and thus, staff's estimated benefits are likely an underestimate.

To forecast future deaths and injuries from debris penetration, staff used death and injury rates per million ROVs/UTVs with its forecast of ''ROVs/UTVs in use'' throughout the 30-year study period. Staff assumed deaths and injuries would stay the same as the average rates observed between 2010 to 2019 [9] in the NEISS and CPSRMS databases: 0.36 deaths, 0.24 hospital admissions, 0.24 ED admissions, and 0.72 doctor/clinic visits per million ROVs/UTVs in use.

Staff forecasted ROVs/UTVs in use using exponential smoothing. Staff then multiplied the number of ROVs/UTVs in use in each year of the study period by the rates of deaths and injuries, to estimate the total number of deaths and injuries for each year of the 30-year study period. Figure 11 displays the estimated number of incidents for each death and injury category from 2010 through 2053 in the baseline scenario, which assumes the proposed rule does not go into effect.

[9] The Commission based its estimated injury rates on the incident data from the window 2010–2019. This window represents a typical 10-year time frame for data analysis, and was the most robust, most recent data that was continuous. Because of ongoing reporting, data from the latest years, 2020 and 2021, are incomplete, and were thus not used in the analysis.

Figure 11 Number of Injuries and Deaths from ROV/UTV Debris Penetration

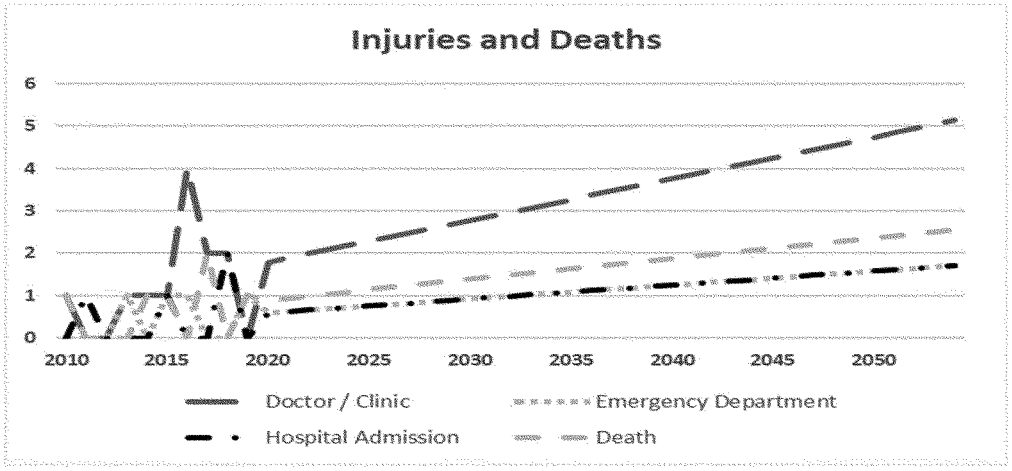


Figure 11 illustrates that most injuries are treated in a doctor's office/clinic. In the year 2053, estimated injuries treated at a doctor's office/clinic reach 5 per year; injuries treated at the ED and those admitted to the hospital largely overlap over the analysis period and reach 1.7 in both cases in 2053; and the estimated number of deaths reaches 2.5 in 2053. In the same year, staff estimated the number of ROVs and UTVs in use to reach 6.98 million, or about three times the number in use in 2019.

3. Societal Costs of Deaths and Injuries Over the 30-Year Study Period

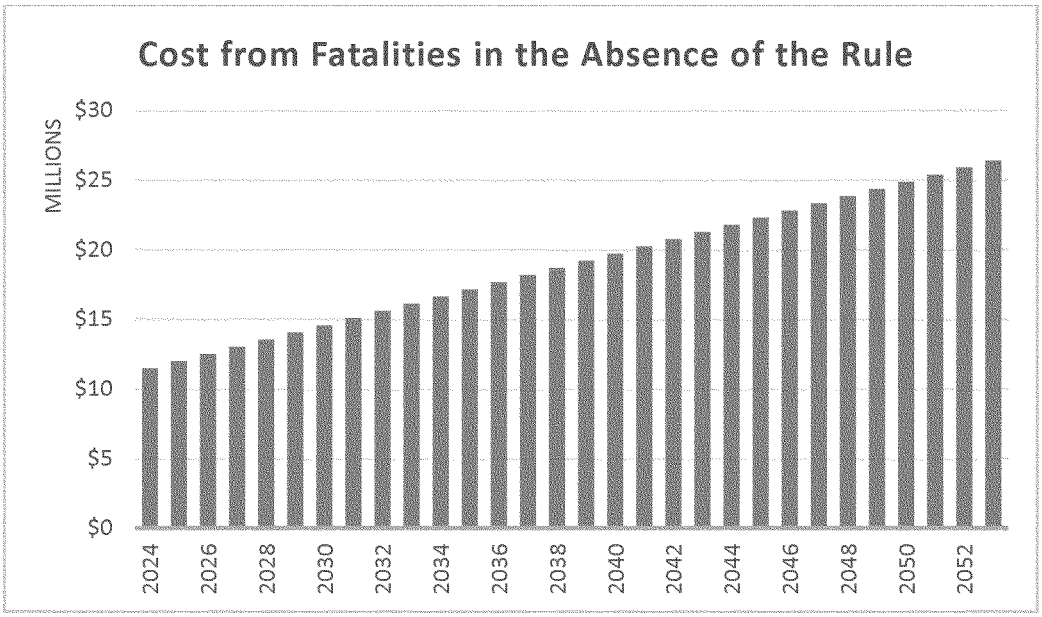
This section presents the methodology to monetize the costs from deaths and injuries from debris penetration in the absence of the rule and determines how much those societal costs would be avoided if CPSC promulgated the proposed rule.

(a) Societal Cost From Deaths

To estimate the societal costs of debris penetration-related deaths, staff applied the VSL. VSL is an estimate used in benefit-cost analysis to place a value on reductions in the likelihood of premature deaths. The VSL does not place a value on individual lives, but rather, it represents an extrapolated estimate based on the rate at which individuals trade money for small changes in mortality risk. This is a ''willingness to pay'' methodology that attempts to measure how much individuals are willing to pay for a small reduction in their own mortality risks, or how much additional compensation they would require to accept slightly higher mortality risks. For this analysis, staff applied a VSL developed by the U.S. Environmental Protection Agency (EPA). The EPA VSL, when adjusted for inflation, is $10.5 million [10] in 2021 dollars. Staff multiplied the VSL by the number of forecasted deaths throughout the study period to calculate societal cost of deaths from debris penetration in the absence of the proposed rule. Figure 12 displays these costs throughout the study period.

[10] In 2008, the EPA estimated the value of a statistical life at $7.9 million. CPSC adjusted this estimate for inflation to the end of 2021, using the Consumer Price Index for All Urban Consumers (CPI–U), estimated the Bureau of Labor Statistics and rounded it to the nearest hundred thousand. The adjustment is as follows: $7.9M × (278.802/210.228) = $10.477M, which is then rounded to $10.5M.

Figure 12: Annual Cost from Fatalities



According to Figure 12, in the first year of the study period (2024), costs from deaths are $11.47 million and grow to $26.42 million in 2053. Over 30 years, estimated societal costs from deaths due to debris penetration aggregate to $568.3 million, according to CPSC staff estimates.

(b) Societal Cost From Injuries

CPSC staff estimated the societal costs of nonfatal injuries from debris penetration using the ICM. The ICM provides estimates of the societal costs of medically treated injuries. The societal cost components provided by the ICM include medical costs, work losses, and the intangible costs associated with pain and suffering.

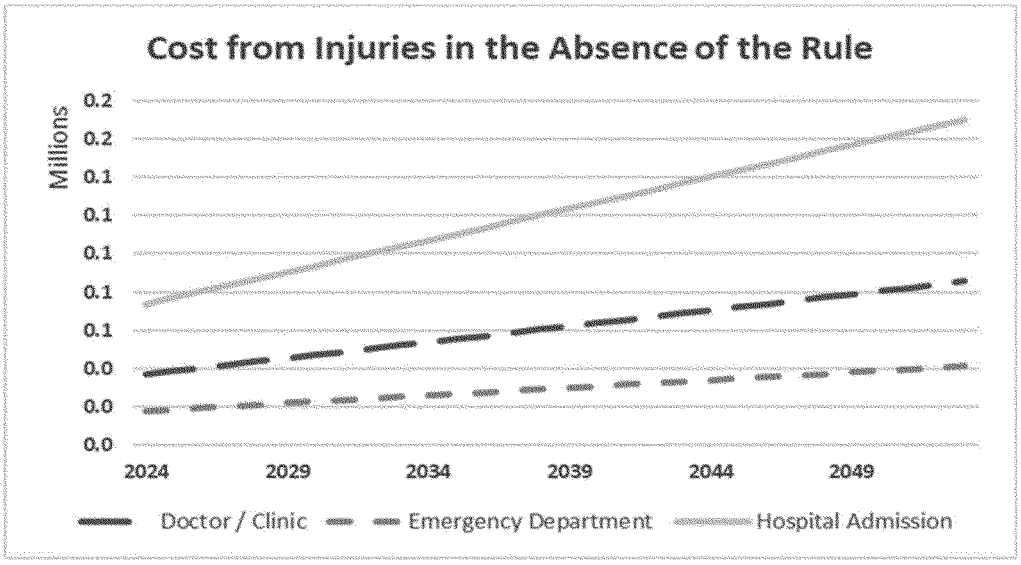
Medical costs include three categories of expenditures: (1) medical and hospital costs associated with treating the injured victim during the initial recovery period and in the long run, including the costs associated with corrective surgery, the treatment of chronic injuries, and rehabilitation services; (2) ancillary costs, such as costs for prescriptions, medical equipment, and ambulance transport; and (3) costs of health insurance claims processing. The ICM derives cost estimates for these expenditure categories from several national and state databases, including the Medical Expenditure Panel Survey (MEPS), the Nationwide Inpatient Sample of the Healthcare Cost and Utilization Project (HCUP–NIS), the Nationwide Emergency Department Sample (NEDS), the National Nursing Home Survey (NNHS), MarketScan® claims data, and a variety of other federal, state, and private databases.

Work loss estimates include: (1) the forgone earnings of the victim, including lost wage work and household work; (2) the forgone earnings of parents and visitors, including lost wage work and household work; (3) imputed long-term work losses of the victim that would be associated with permanent impairment; and (4) employer productivity losses, such as the costs incurred when employers spend time rearranging schedules or training replacement workers. The ICM bases these estimates on information from the MEPS, the Detailed Claim Information (a workers' compensation database) maintained by the National Council on Compensation Insurance, the National Health Interview Survey, the U.S. Bureau of Labor Statistics, and other sources.

The intangible costs of injury reflect the physical and emotional trauma of injury, as well as the mental anguish of victims and caregivers. Intangible costs are difficult to quantify because they do not represent products or resources traded in the marketplace. Nevertheless, they typically represent the largest component of injury cost and need to be accounted for in any benefit-cost analysis involving health outcomes. The ICM develops monetary estimates of these intangible costs from jury awards for pain and suffering. Although these awards can vary widely on a case-by-case basis, studies have shown that these awards are systematically related to several factors, including economic losses, the type and severity of injury, and the age of the victim. The ICM derives these estimates from a regression analysis of jury awards compiled by Jury Verdicts Research, Inc., in nonfatal product liability cases involving consumer products.

The ICM estimated that the costs (in 2021 dollars) associated with nonfatal debris penetration injuries are: $17,013 for injuries treated at the doctor's office/clinic, $24,694 for injuries treated at the emergency department, and $101,433 for injuries that result in hospital admission. The Commission multiplied these estimates by the number of forecasted incidents in Figure 11 to estimate societal costs from injuries through 2053. Figure 13 shows the forecasted societal costs from injuries in the absence of the rule through 2053.

Figure 13: Cost of Injuries



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As reflected in the chart, society would incur a cost in the first year of the study period (2024) of $0.04 million for injuries treated at a doctor's office/clinics, $0.02 million for those treated at EDs, and $0.07 million for injuries resulting in hospital admissions. These costs grow to $0.09 million for doctor's office/clinic, $0.04 million for ED, and $0.17 million for hospital admissions in 2053. Over 30 years, staff estimated the societal costs from injuries due to debris penetration aggregate to $1.85 million for doctor's office/clinic, $0.89 million for ED, and $3.66 million for hospital admissions. The total cost for all injuries reaches $6.39 million over the 30-year study period.

(c) Benefits From the Proposed Rule

The total estimated societal cost of deaths and injuries in the absence of the proposed rule would be $574.69 million over the study period (2024–2053). However, the proposed requirements in the proposed rule are not expected to mitigate all the deaths and injuries from debris penetration. Based on laboratory tests, CPSC staff estimates that approximately 95 percent of all incidents would be avoided because of the implementation of the proposed rule.[11] The Commission assesses that implementing the performance requirement would prevent all debris penetration incidents that occur when the vehicle is travelling 10 mph or below, and most incidents travelling above 10 mph.

Additionally, in the initial years after the implementation of the proposed rule, some noncompliant ROVs and UTVs will still be in use. To account for this, staff estimated the percentage of noncompliant ROVs/UTVs in each year during the 30-year study period. For instance, in the first year of the study period (2024), staff estimated that only 17.6 percent of ROVs/UTVs in use would be compliant, and only 16.7 percent (17.6 percent product compliant rate × 95 percent rule effective rate) of the $11.6 million in societal costs would be avoided because of the proposed rule, which equates to $1.94 million ($11.6 million × 16.7 percent). Staff estimates the compliance rate of ROVs/UTVs in use increases to 84.4 percent by 2029 (*i.e.,* 6 years from the implementation of the rule), and it approaches 100 percent by 2035. After this adjustment, staff estimated that from 2024 through 2053, an aggregate $537.29 million in societal costs would be avoided if the CPSC promulgated the proposed rule.

4. Annualized and Per-Vehicle, In-Use Benefits of the Proposed Rule

Staff converted the aggregate benefits over the 30-year period of study into annualized and ''per-product'' metrics.

The undiscounted average annual benefits are $17.02 million. To calculate present value, staff discounted the annual benefits in each year of the 30-year period using a compounding three 3 percent discount rate. The annualized benefits, at a 3 percent discount rate, are $15.47 million. To estimate the benefit per product, staff divided the annualized benefits (undiscounted and discounted) by the average number of compliant vehicles. Using this methodology, staff estimated the benefits from the proposed rule per ROV or UTV in use to be $20.32 per vehicle undiscounted and $12.07 per vehicle discounted at three 3 percent.

Table 4 presents the findings from this benefits assessment from both the annualized and per-product perspectives.

TABLE 4—TOTAL AND PER-PRODUCT BENEFITS, UNDISCOUNTED AND DISCOUNTED AT 3%

Benefits	Undiscounted	Present value (discounted at 3%)
Annualized ($M)	$17.02	$15.47
Per Vehicle ($)	20.32	12.07

[11] Staff supplements its assessment of a 95 percent effective efficacy rate with a sensitivity analysis that reduces the effective efficacy rate to 60 percent in section VIII.E.1 of this preamble, Uncertainty and Sensitivity Analysis. Sixty percent represents an approximation of the share of debris penetration incidents that occurred when vehicles were traveling 10 mph or below.

D. Preliminary Regulatory Analysis: Cost Analysis

This section discusses the costs this proposed rule would impose on society. There are three sets of societal costs discussed under this cost section: the cost of implementing an ROV/UTV fix that addresses the debris penetration hazard; the costs associated with government oversight and compliance monitoring (considered negligible); and the deadweight losses or market impacts derived from the implementation of an ROV/UTV fix.

Like the benefits estimation, the time span of the cost analysis covers a 30-year period that starts in 2024, which is the expected year of implementation of the rule. This cost analysis presents all cost estimates in 2021 dollars, including cost estimates before 2021, using price index adjustments. This cost analysis also discounts costs in the future, using a 3 percent discount rate to estimate their present value.[12]

In this regulatory assessment, staff considers two solutions to the debris penetration hazards under the proposed rule, each with a separate set of costs. Both scenarios are effective in preventing debris penetration at 10 mph and below, and mitigating debris penetration above 10 mph. Both scenarios require manufacturers to redesign existing models to allow proper installation of the floorboard solution of choice.

1. *Redesigned Floorboards:* Manufacturers fully redesign floorboards where most of the material in the original floorboard is redistributed into a new shape and thickness that is required to address the debris penetration hazard. Manufacturers then redesign ROV/UTV models to enable the installation of the redesigned floorboards and meet the requirements of the new ROV/UTV proposed mandatory standards.

2. *Floorboard Guards:* Manufacturers redesign existing floorboards to add a 2′ × 2′ × 0.19″ aluminum piece that acts as a floorboard guard and prevents debris penetration. This new aluminum piece's design blocks debris from hitting hazardous sections of the floorboard. Manufacturers then redesign ROV/UTV models to enable the installation of floorboards with floorboard guards that meet the requirements of the new ROV/UTV proposed mandatory standards.

This analysis assessed these two solutions as separate scenarios to produce a range of potential costs of compliance with the proposed rule. Some of the unit cost estimates in this analysis are based on SEA Ltd.'s testing and analysis. Under each scenario, staff assumed that 100 percent of manufacturers decide to adopt the solution being assessed. Therefore, staff estimated in each scenario the full cost of deploying that solution for all firms. In practice, however, manufacturers may choose a combination of the two solutions, or a different solution that proves more cost effective. Staff welcomes public comments on the likelihood of manufacturers adopting either solution or a solution not considered in this analysis.

• Cost of Implementing an ROV/UTV Fix to Debris Penetration

Manufacturers directly incur costs to redesign existing models and produce new designs that solve the debris penetration hazard, as well as the cost of producing and installing either a redesigned floorboard or floorboard guard on each new ROV/UTV manufactured after the implementation of this proposed rule is implemented. The increased cost is then passed indirectly on to wholesalers.

The subcategories of costs for implementing an ROV/UTV fix to debris penetration are:

▪ Cost of Redesigning Existing ROV/UTV Models and of New Designs

Manufacturers incur design costs that include redesigning existing ROV/UTV models, as well as designing future ROV/UTV models, which enable the installation of a floorboard solution to the debris penetration hazard.

Manufacturers would have to redesign existing ROV/UTV models with a floorboard solution if they wish to continue selling these models to consumers. Manufacturers, therefore, would have to allocate funds to produce a floorboard solution design and adapt existing ROV/UTV models to enable the installation of a floorboard solution. Manufacturers would likely incur expenditures in design labor, design production, design validation, and compliance testing. Each of these subcategories of costs are discussed below.

○ Cost of Design Labor

The cost to compensate model designers employed by the manufacturer (or a third-party design shop) for the time it takes to produce a blueprint of the redesigned ROV/UTV model.

○ Cost of Design Production

The cost of materials and labor required to fabricate prototypes of the ROV/UTV model.

○ Cost of Design Validation

The cost of conducting validation testing of prototypes to ensure proper functioning of the redesigned ROV/UTV model and conformance with preset requirements established by the manufacturer. This is customarily conducted through in-house, indoor sled testing.

○ Cost of Compliance Testing

The cost of conducting formal third party compliance testing to verify compliance with the requirements of the new ROV/UTV mandatory standards. Compliance testing is customarily conducted through third party testing.

Manufacturers would also be required to upgrade all new designs with the floorboard solution. A large-scale ROV/UTV manufacturer[13] conveyed to staff that once existing models have been redesigned with a working floorboard solution, new models can adapt such a solution at a minimal cost. Therefore, the additional cost of implementing a debris penetration solution onto future designs is considered negligible, and it is not addressed further in this analysis.

▪ Cost of Manufacturing and Installing a Floorboard Solution

Manufacturers directly incur costs to produce the floorboard solution of their choice[14] and install it in every new vehicle manufactured after the implementation of the proposed rule. Manufacturers would likely incur expenditures to purchase the required materials to fabricate the floorboard and produce and install the selected floorboard solution. These subcategories of costs are discussed below.

○ Cost of Materials and Production of the Floorboard Solution

Staff assumed that the production cost of the floorboard solution closely matches the production cost of the original floorboard. Therefore, the incremental production cost is negligible, and the estimates in this subcategory focus exclusively on the incremental cost of the materials required to produce the floorboard solution.

[12] Discounting future estimates to the present allows staff not only to consider the time value of money, but also the opportunity cost of the investment, that is, the value of the best alternative use of funds.

[13] CPSC staff conducted a virtual meeting on February 7, 2022, with a large manufacturer's representative to discuss the cost of implementing an ROV/UTV fix to the debris penetration hazard.

[14] The floorboard solution can be fabricated in-house by the manufacturer or by a third party contractor hired by the manufacturer.

○ Cost of Installation of the Floorboard Solution

Staff assumed that the installation cost of the floorboard solution closely matches the installation cost of the original floorboard. Therefore, the incremental installation cost is negligible.

• Cost of Government Oversight and Compliance Monitoring

Staff does not expect the implementation of the proposed rule to require significant resources or additional oversight and compliance monitoring by CPSC. CPSC can reasonably provide oversight and monitoring of the new ROV/UTV floorboard requirements with existing resources. Therefore, staff assumed the additional cost incurred by the government to provide additional oversight and compliance monitoring to be of an insignificant magnitude, and thus, it is not addressed further in this analysis.

• Deadweight Loss

The requirements for ROVs/UTVs in the proposed rule increase the marginal cost of production for manufacturers. Manufacturers can transfer some, or all, of the increased production cost to consumers through price increases.[15] [16]

At the margins, some producers of a product may exit the market as a result of production cost increases where their increased marginal costs come to exceed the market price. At the same time, a fraction of consumers of that product are excluded from the market because the increased market price now exceeds their personal price threshold for purchasing. Deadweight loss[17] is the measure of the losses faced by these marginal producers and consumers, who are forced out of the market due to the new requirements of the proposed rule. For this analysis, staff estimated deadweight loss for each year the proposed rule is expected to have an impact on marginal cost and market price. The estimate assumes that producers based their production decisions on the long-term impacts of the rule on their cost of production.

The following two subsections present the cost estimates for each of the two scenarios for compliance with the proposed rule.

1. First Compliance Scenario: The Cost of Redesigned Floorboards

This subsection presents cost estimates for the scenario that assumes all manufacturers install a fully redesigned floorboard on each new ROV/UTV to comply with the proposed rule. Manufacturers would also redesign all existing and future ROV/UTV models to allow proper installation of the redesigned floorboards.

(a) Cost of Redesigning ROV/UTV Models

Staff estimated the cost of redesigning all existing ROV/UTV models by multiplying the unit cost of redesigning each existing model by the number of ROV/UTV models to be redesigned. These factors are discussed in more detail below. As discussed earlier, the additional design cost to enable the installation of the redesigned floorboards on new ROV/UTV model designs is considered negligible; therefore, this section only presents cost estimates for the redesign of existing ROV/UTV models.

i. Unit Cost of Redesigning ROV/UTV Models

Staff estimated the unit cost of redesigning existing ROV/UTV models in two steps. First, staff estimated the unit cost of redesigning a single or ''first'' model, before achieving any cost improvements.[18] Second, staff developed a cost improvement curve to account for economies of scale in the redesign of a large number of models, and the efficiency gains from specialization and learning.

Staff estimated the unit cost of the ''first'' model using information from multiple sources, including laboratory tests performed to measure speeds and energy levels at which debris penetrate ROV/UTV floorboards.[19] CPSC staff produced estimates of the cost of redesigning a ROV/UTV at each stage of the design process:

○ Cost of Design Labor

Staff estimated it would require a team of two designers 1 month to produce a final blueprint of an ROV/UTV model design that complies with the requirements of the proposed rule, or approximately a total of 347 hours.[20] The average compensation rate of a designer is $63.96 per hour[21] for a total cost of $22,536 per redesigned model in 2021 dollars.

○ Cost of Design Production

Staff estimated the cost of fabrication of each floorboard at $2,000 per floorboard prototype. Staff estimated an average of three floorboard prototypes would be required per model redesign for a total production cost of $6,000 per model.

○ Cost of Design Validation

Staff estimated 2 days of validation testing would be required per each redesigned ROV/UTV model for a total of $59,372 per model.[22]

○ Cost of Compliance Testing

Staff estimated that, on average, two ROV/UTV models would be tested per

[15] An increase in the marginal cost of production in a competitive market normally is followed by an increase in the prices at which products are traded. The portion of the increased production costs that are paid for by consumers through higher market prices depends on the price responsiveness of demand and supply of the product. The price responsiveness of demand and supply are measured by the price elasticity of demand and supply, respectively. Price elasticity is a measure of how responsive the volume of product demanded or supplied in the market is to a change in the price of such product. *See* footnote 15 in the staff briefing package for formula to estimate price elasticity. For most products, the elasticity of demand is a negative number that indicates price increases lead consumers to demand less of the product; while the elasticity of supply is a positive number that indicates an increased willingness to offer products in the market as the price of the product increases.

[16] *See* footnote 16 in the staff briefing package for the formula to estimate the change in the market price of equilibrium that follows an increase in production costs in a competitive market. In a market with a completely inelastic demand, producers can transfer the entire change in the cost of production to consumers through price increases. The highest the elasticity of demand, the lowest the portion of the increased production costs that can be transferred to consumers through price increases.

[17] *See* footnote 17 in Tab B of the staff briefing package for the calculation used to estimate deadweight loss.

[18] The design costs per ROV/UTV model are expected to decrease as the number of redesigned ROV/UTV models increases (*i.e.,* fixed costs spread over additional models, increased level of experience redesigning ROV/UTV models).

[19] CPSC Study of Debris Penetration of Recreational Off-Highway Vehicle Floorboards conducted under contract by SEA Ltd., in 2020/2021.

[20] CPSC staff estimated it would take up to two-person months to modify an existing ROV/UTV model that does not comply with the requirements of the proposed rule, with a maximum of 4 months and a minimum of 1 month. Source: Notice of Proposed Rulemaking to Establish a Safety Standard for Recreational Off-Highway Vehicles. September 2014. This is 346.67 hours, the average number of hours per month of 173.33 (40 hours a week × 52 weeks a year/12 months) times 2 (two-person months).

[21] As of September 2021, the average total hourly compensation for management, professional, and related workers was estimated at $63.96 (Bureau of Labor Statistics, Table 2—Employer Costs for Employee Compensation for Civilian Workers by Occupational and Industry Group, *https://www.bls.gov/news.release/ecec.t02.htm*). The total cost for two-person months as of September 2021 is $22,172.8 (346.67 hours times $63.96). Adjusted by the CPI price index, this estimate increases to $22,535.89 ($22,172.8 × 278.802/274.31) as of December 2021 (Bureau of Labor Statistics—Consumer Price Index for All Urban Consumers, Series ID CUUR0000SA0, 1982–84 base period, *https://data.bls.gov/cgi-bin/surveymost?cu*).

[22] As part of the CPSC study on debris penetration, SEA Ltd., conducted a total of 5 days of validation testing for a total cost of $138,570, or $27,714 per day as of September 2020. The cost of 2 days of testing brought forward to the end of 2021, using the CPI price index for all urban consumers, is $59,732.36 ($27,714 per day × 2 days × 278.802/260.28).

day of sled testing or $14,843 per redesigned model.[23]

Based on the unit costs, the total ''first'' model cost per redesigned ROV/UTV model is $102,751.[24] This estimate is before the consideration of cost improvements from economies of scale and learning in model design.[25] To account for cost improvements, as the number of ROV/UTV models that are redesigned increases, staff used a cost improvement curve. The improvement curve assumes that every time the number of units produced doubles, there is a 5.4 percent reduction in the average redesign cost per ROV/UTV model.[26]

Figure 14 shows the cost improvement trends for each of the design cost components discussed earlier:

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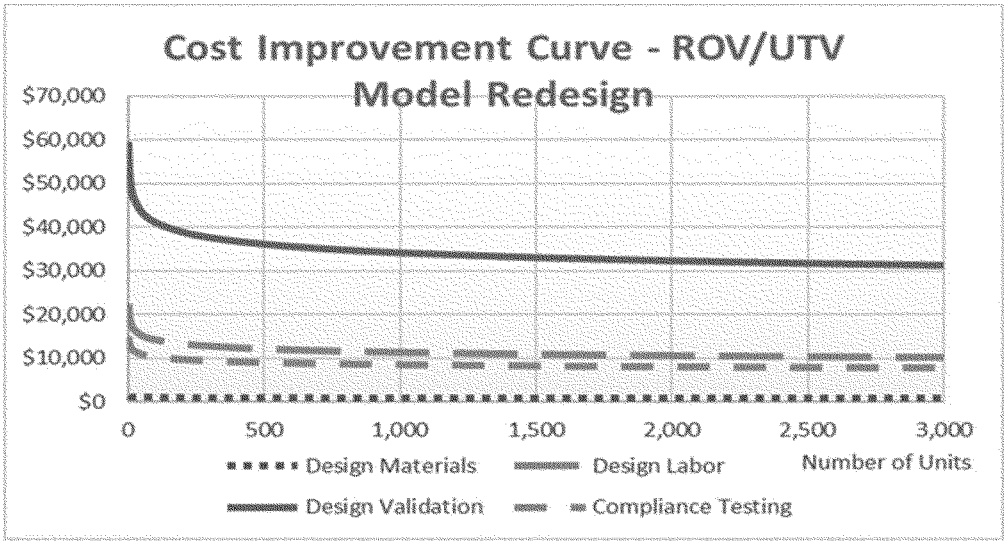
Figure 14: Redesign Cost Improvement Curve – Scenario I (Redesign Floorboards)



The trends in the chart show that when manufacturers redesign 3,000 ROV/UTV models in a particular year, the average redesign cost per model in that year would reach almost half the redesign cost of the ''first'' model (overall a cost of around $52,000 per model).

Since the redesign cost of models varies with the number of models redesigned each year, it is pertinent to discuss—before the discussion of unit cost per model—the forecasted the number of models.

ii. Number of Redesigned ROV/UTV Models

Figure 15 shows the number of new models sold during the period 1991 through 2019, as well as an estimate of the total number of ROV/UTV models in use by consumers during the same period.[27] For instance, in 2019, a total of 107 new models were introduced; the same year, an estimated 672 models were in use by ROV/UTV owners/users.

[23] The cost of validation testing from the CPSC contract with SEA Ltd., is $27,714 per day as of September 2020. CPSC staff estimates a total of three validation tests can be performed per day of third-party validation testing; however, the logistics involved in validation testing may reduce it to an average of two tests per day. The cost per model in dollars as of the end of 2021 is then $14,843 ($27,714 per day/2 models per day × 278.802/260.28).

[24] $102,751.34 = $22,535.89 (labor cost) + $6,000 (floorboard fabrication) + $59,372.36 (validation testing) + $14,843.09 (compliance testing).

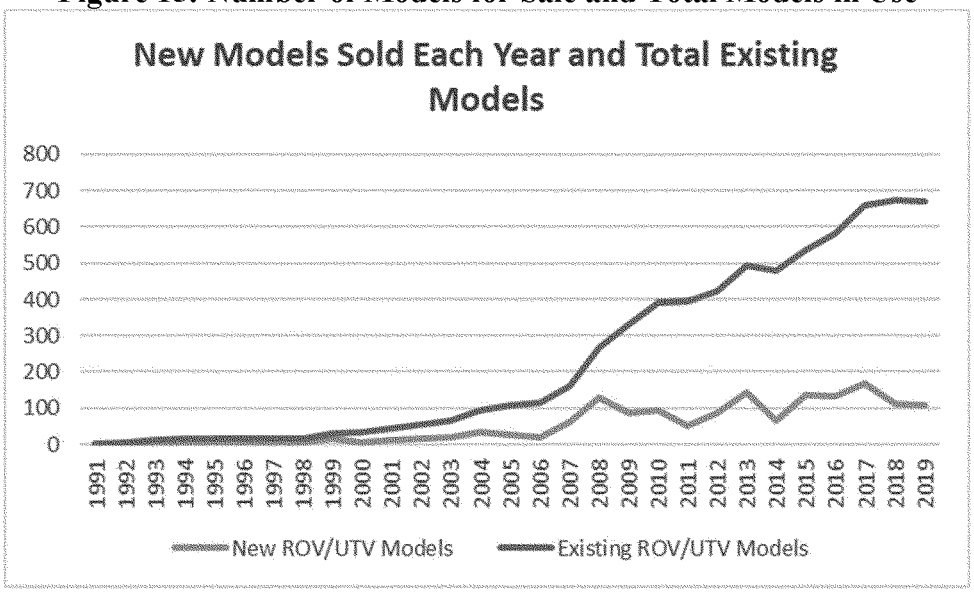
[25] The traditional definition of ''learning curves''—or more properly in this case, ''cost improvement curves''—is centered on the observation that the cost per unit is reduced by a certain percentage every time the number of units produced doubles. The most cited models are derived from T.P. Wright (1936—cumulative average unit cost) and J.R. Crawford (1944—specific unit cost). *See* footnote 26 in Tab B of the staff briefing package for the functional form in both of these models.

[26] For simplicity, staff assumed each of the redesign cost categories discussed here follows the same cost improvement trend. *See* footnote 27 in Tab B of the staff briefing package for the functional form of the cost improvement curve—or learning curve—used by staff.

Cost improvement curves are usually estimated econometrically using available cost/manufacturing data; however, in the absence of such information, CPSC selected the cost improvement percentage based on cost improvement curves from similar activities and derived the parameters.

[27] The number of models sold in each year of this period was estimated using the North American Utility Vehicle Sales from 1991 to 2019. It excludes ROV/UTV models designed for the use of children (*i.e.,* ''Minis'').

Figure 15: Number of Models for Sale and Total Models in Use



Staff forecasted the number of new models every year in the 30-year study period by applying exponential smoothing forecasting techniques [28] to the number of new models produced.[29] Then, staff used the forecast of the number of models to estimate how many models would be in use in every year in the 30-year study period by applying a statistical distribution of model life rates [30] based on the average number of years a model is offered for sale in the market for new ROVs/UTVs.

Figure 16: Forecast of Models for Sale and Total Models in Use

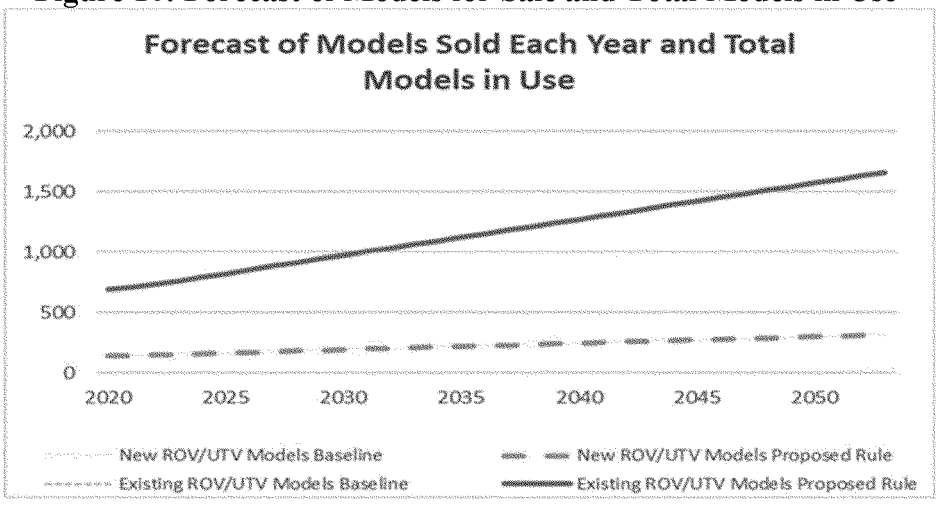


Figure 16 shows the number of new models sold and the number of models in use during each year within the 30-year study period. In 2023, a year before the assumed implementation of the proposed rule, the number of ROV/UTV models in use is 762. This is the number of existing models that manufacturers would be required to redesign.[31] Staff assumed for purposes of this analysis that redesign of all existing models would occur over 2 years, from 2024 to

[28] Exponential smoothing is a time series forecasting technique that produces projections that are weighted averages of past observations, with weights that decay exponentially as the observations get older. More recent observations are, therefore, assigned heavier weights and carry more importance in the forecast.

[29] CPSC staff developed two sets of forecasts, the first set (or baseline forecast) assumes no impacts from the proposed rule, while the second set considers a small reduction in the number of models as a result of the market impacts of introducing the proposed rule. Because the cost impacts of the proposed rule are relatively small, the difference between the two sets of forecasts are small and not noticeable in the chart below.

[30] A two-parameter gamma distribution was used to forecast model survival rates with *a* shape parameter of 5 and scale parameter of 1. These distribution parameters are consistent with a mean model duration of 5 years, which was estimated subtracting the year of model introduction from the year the model was discontinued from the North American Utility Vehicle Sales database. The distribution of model life rates mentioned above is the converse of the distribution of model survival rates.

[31] Starting on the year of implementation of the rule (expected in 2024), all existing and new models will have to include a floorboard solution that complies with the requirements of the new standard to be sold to new/prospective ROV/UTV customers. Given the incremental cost of designing new models is negligible, the redesign cost is only estimated for existing models requiring new blueprints that enable the installation of the redesigned floorboards.

2025, at 381 models per year. Although the proposed effective date for the draft rule is 180 days after promulgation, staff assumed manufacturers would prioritize redesigning the most popular models before the effective date. Staff welcomes public comment on the redesign process of ROV and UTV models and the rapidity with which this is able to occur.

Due to cost improvements associated with redesigning a relatively large number of ROV/UTV models, (381) in each of the first 2 years, staff estimated the initial cost per model redesign to drop from $102,751 to an average of $53,877 each year. Therefore, the industry incurs a redesign cost of $20.51 million in 2024 and 2025, respectively. The total redesign costs over the 30-year study period are $41.02 million. The total redesign costs are equivalent to a present value of $39.24 million at a 3 percent discount rate. Table 5 summarizes the ROV/UTV redesign cost under the redesigned floorboard scenario:

TABLE 5—REDESIGN COSTS IN SCENARIO I

[Redesign floorboards]

Redesigned floorboard scenario	Cost per redesign model ($M)	Number of ROV/UTV models	ROV/UTV redesign cost ($M)
2024	$0.054	381	$20.51
2025	0.054	381	20.51
Overall	0.054	762	41.02
Present Value	.....	.....	39.24

(b) Cost of Manufacturing a ROV/UTV Floorboard Solution

Staff estimated the cost of producing and installing [32] redesigned ROV/UTV floorboards on all new ROVs/UTVs manufactured after the implementation of the proposed rule, by multiplying the unit cost of each floorboard by the number of floorboards to be installed. These components are discussed in more detail below.

i. Unit Cost of Redesigning Floorboards

Staff estimated the unit cost of the redesigned ROV/UTV floorboard in two steps. First, staff used unit costs informed by laboratory tests performed to measure floorboard resistance at different speeds, for the additional cost of production and materials as the cost of the ''first'' redesigned floorboard in the cost improvement curve.[33] Second, staff produced an estimate of the average additional cost per floorboard once manufacturers started producing compliant floorboards in large quantities; the cost-improvement curve to render estimates in line with the subject matter experts in CPSC's Directorate for Engineering assessed would be the cost after economies of scale take effect.

Staff estimated the incremental cost of the ''first'' ROV/UTV floorboard using information from laboratory tests performed to measure debris penetration resistance of ROV/UTV floorboards. Staff estimated the cost of a floorboard resistant to debris penetration at 10 mph to be $264.[34] Staff then produced an estimate of the cost of the redesigned floorboard considering cost improvements from economies of scale, as well as other considerations, like the reuse of most of the material contained in existing floorboards. The average incremental cost per floorboard under these conditions is not expected to exceed $10 per floorboard.

Staff calibrated a cost improvement curve that assumes each time the number of floorboards produced doubles, there is a 15.9 percent reduction in the average floorboard cost.[35] Figure 17 shows the cost improvement curve at different scales of floorboard production:

[32] As discussed, the additional cost of installing redesigned floorboards on new ROVs/UTVs is considered negligible; therefore, this section only presents cost estimates for the additional production costs (more specifically the additional materials) of the redesigned floorboards.

[33] The traditional definition of ''learning curves''—or more properly in this case ''cost improvement curves''—is centered on the observation that the cost per unit is reduced by a certain percentage every time the number of units produced doubles. The most cited models are derived from T.P. Wright (1936—cumulative average unit cost) and J.R. Crawford (1944—specific unit cost). *See* footnote 34 in Tab B of the staff briefing package for the functional form in both of these models.

[34] CPSC Study of Debris Penetration of Recreational Off-Highway Vehicle Floorboards conducted under contract by SEA Ltd., in 2020/2021. SEA tested multiple floorboards, a floorboard that successfully resisted debris penetration at 10 mph was purchased for $259 in August 2021. This estimate was brought forward to the end of 2021, using the Consumer Price Index for all Urban Consumers ($263.96 = $259 × 278.802/273.567).

[35] *See* footnote 36 in Tab B of the staff briefing package for an explanation of the calculation.

Figure 17: Prod/Materials Cost Improvement Curve - Scenario I (Redesigned Floorboards)

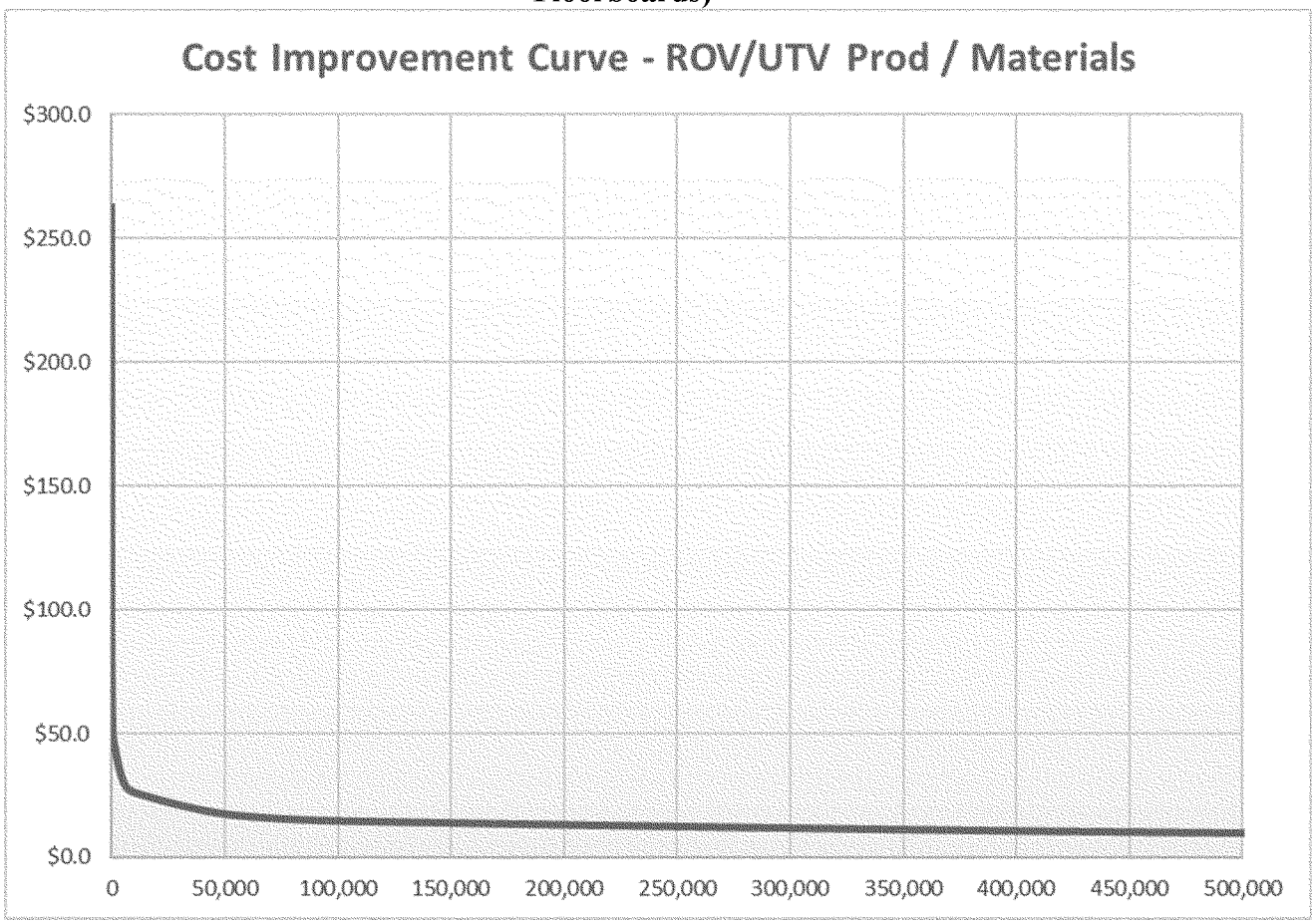


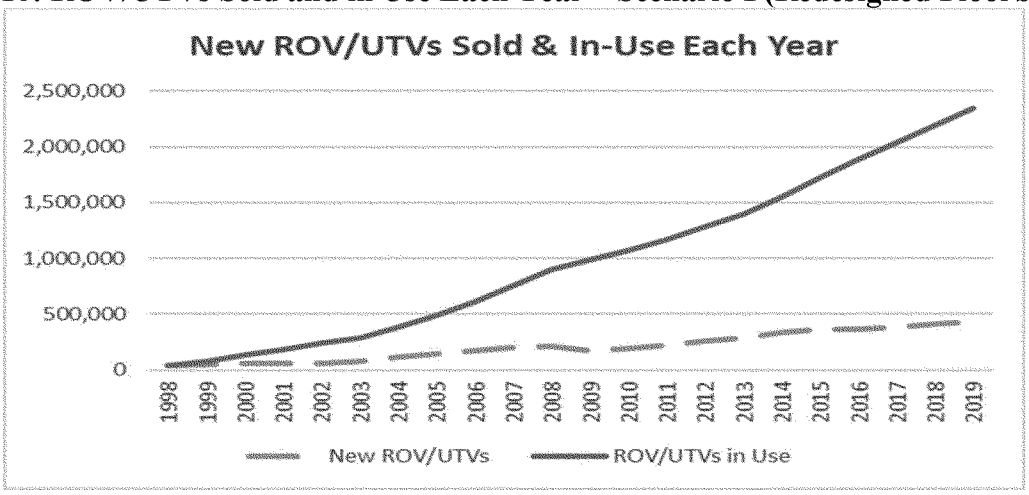
Figure 17 shows that with 100,000 floorboards produced, the average cost drops to less than $15 per redesigned floorboard. In most years, sales of new ROV/UTVs are above 500,000 units, which the cost improvement curve correlates to an average additional cost of less than $10 per redesigned floorboard. The average floorboard cost is, as shown in the chart, dependent on the number of sales per year, which is discussed below.

ii. Number of ROVs/UTVs Sold

Figure 18 shows the number of new ROVs/UTVs sold during the period 1998 through 2019, as well as an estimate of the total number of ROVs/UTVs in use during the same period.[36] During 2019, firms sold 429,135 new ROVs/UTVs to consumers, and the number of ROVs/UTVs in use during the same year averaged 2.34 million.

[36] Staff estimated the number of ROVs/UTVs sold each year during the period 1998 to 2019, using the North American Utility Vehicle Sales database. For the purpose of the analysis, the number of vehicles excludes ROVs/UTVs sold for the use of children (*e.g.,* ROV/UTV ''Minis'').

Figure 18: ROV/UTVs Sold and in Use Each Year – Scenario I (Redesigned Floorboards)



Staff used exponential smoothing techniques to forecast the number of new ROV/UTV sales within the 30-year study period.[37] Staff also forecasted the number of ROVs/UTVs in use by applying a statistical distribution of product life rates [38] to the fleet.

Figure 19: Forecast of ROV/UTVs Sales and ROV/UTVs in Use – Scenario I (Redesigned Floorboards)

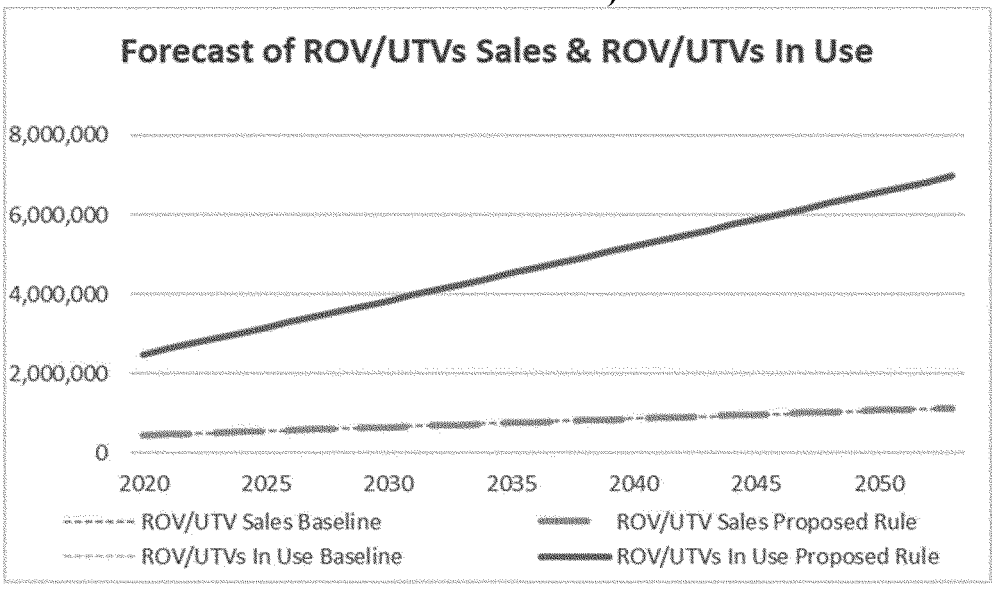
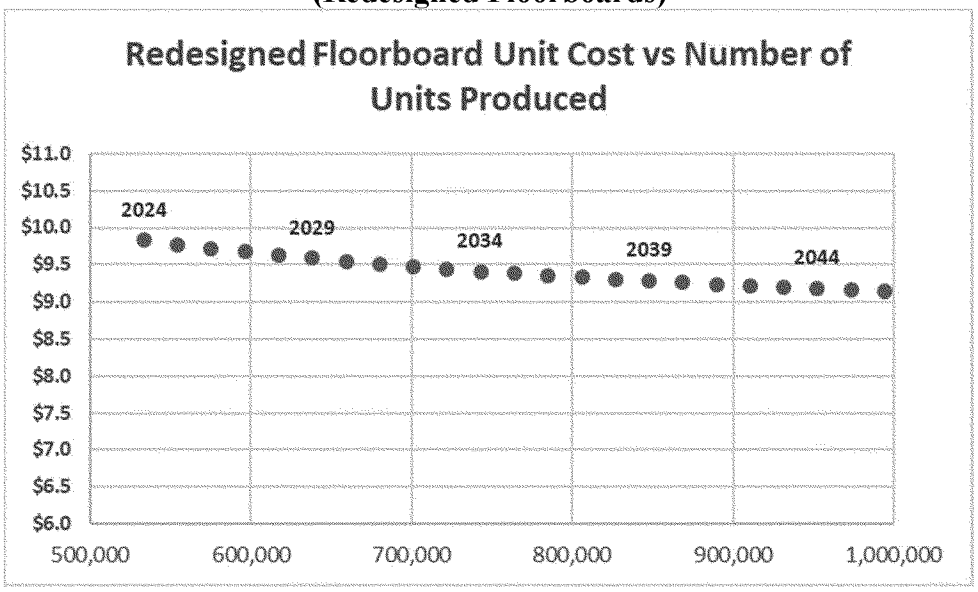


Figure 19 shows ROVs/UTVs sales and the number of ROVs/UTVs in use during the 30-year study period. Since each new ROV/UTV sold requires a redesigned floorboard, the number of floorboards to be fabricated is equivalent to the number of units sold during the period 2024 to 2053. Figure 20 shows the number of floorboards produced over time and the corresponding (undiscounted) cost per unit.

[37] CPSC staff developed two sets of ROV/UTV forecasts, the first set (or baseline forecast) assumes no impacts from the proposed rule, while the second set considers a small reduction in the number of ROVs/UTVs from the market impacts of the proposed rule. Because the cost impacts of the proposed rule are relatively small, the difference between the two sets of forecasts is small and not noticeable.

[38] A two-parameter gamma distribution was used to forecast ROV/UTV survival rates with shape parameter of 6 and scale parameter of 1 corresponding to a mean ROV/UTV duration of 6 years. The distribution of product life rates mentioned in the paragraph above is the reciprocal of the distribution of survival rates.

Figure 20: Redesigned Floorboard Unit Cost by Production Volume – Scenario I (Redesigned Floorboards)



The total cost of producing and installing redesigned floorboards in every new ROV/UTV is $227.09 million over the 30-year study period. The equivalent present value at a 3 percent discount rate is $142.15 million. Table 6 summarizes these costs:

TABLE 6—ADDITIONAL COST OF FLOORBOARDS ON ROV/UTVS—SCENARIO I

[Redesigned floorboards]

Redesigned floorboard scenario	Average cost per redesigned floorboard ($)	Millions of new ROVs/UTVs with redesigned floorboards	Cost of redesigned floorboards on ROVs/UTVs ($M)
2024–2053	$9.04	25.12	$227.09
Present Value			142.15

The total cost of implementing the redesigned floorboard fix for debris penetration is summarized in Table 7:

TABLE 7—REDESIGN AND PRODUCTION COST—SCENARIO I

[Redesigned floorboards]

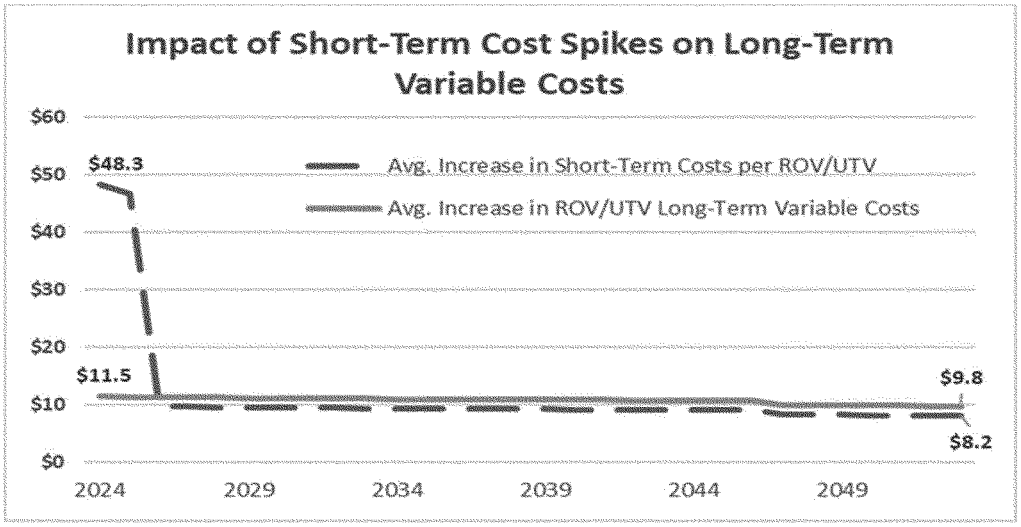
Cost of redesigned floorboard fix	Average cost per ROV/UTV ($)	Millions of new ROVs/UTVs	Cost of redesigned floorboards ($M)	Present value ($M)
Cost of Redesigning Existing Models	$1.63	25.12	$41.02	$39.24
Cost of Producing Redesigned Floorboards	9.04	25.12	227.09	142.15
Cost of Redesigning Floorboard Fix	10.67	25.12	268.11	181.39

(c) Deadweight Loss

To produce an estimate of the market-related losses to producers and consumers, staff estimated the annual average increased cost of production, the resulting increase in average prices, and reduction in volumes traded in the ROV/UTV market. Staff then used those estimates to calculate the deadweight loss for each year in the 30-year study period.

Staff assumed that manufacturers would increase prices in response to changes in the average long-term variable costs of producing ROVs/UTVs. Staff calculated the expected changes in long-term variable costs by spreading the spikes in short-term costs from complying with the proposed rule, as shown in Figure 21:

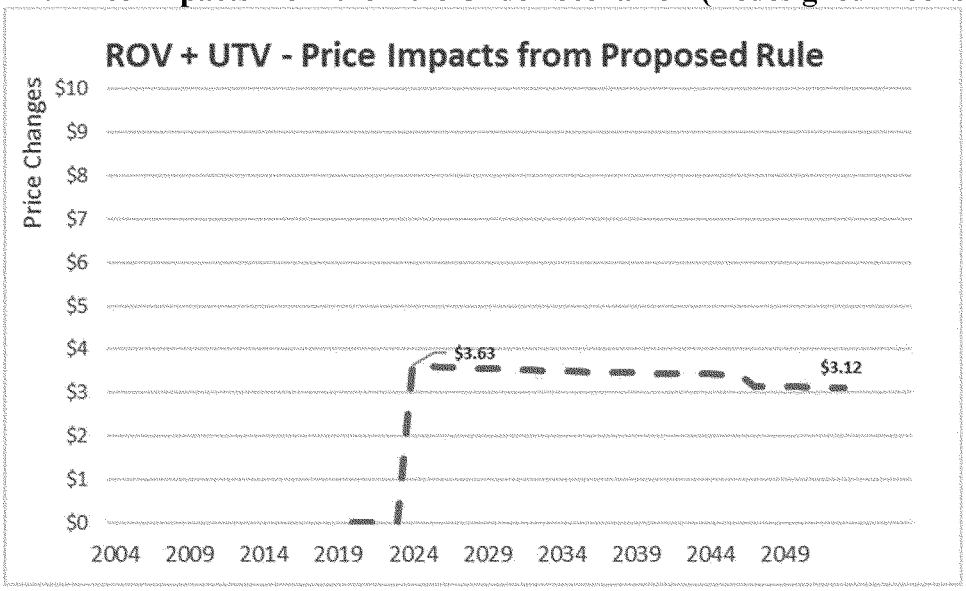
Figure 21: Long-Term Impact of Short-Term Cost Spikes – Scenario I (Redesigned Floorboards)



Staff augmented the average long-term cost per ROV/UTV redesigned floorboard shown in Figure 19 by a 38 percent [39] wholesaler distribution markup. This simulates the market impact that the proposed rule has on the ROV/UTV supply curve.

Staff adjusted the average annual prices from the period 2004 to 2019,[40] to constant 2021 dollars,[41] and then forecasted prices for the 30-year study period using exponential smoothing. The charts in Figure 22 show the prices in baseline conditions (assuming no proposed rule in effect) forecasted through 2053, as well as the price impacts of the proposed implementation of the rule.

Figure 22: Price Impacts from the Rule Under Scenario I (Redesigned Floorboards)



The impact of the rule on the ROV/UTV price is very small, accounting for less than 0.03 percent of the average market price.[42] Consequently, the change in market volume is also very small. The small price and quantity

[39] The effective market impact is likely to include a markup to cover the wholesalers' distribution costs. The 38 percent markup comes from Goldberg 1995.

[40] Average annual prices were estimated using the North American Utility Vehicle Sales database. Prices of ROV/UTV designed for the use of children were excluded from the weighted price average.

[41] Prices were brought forward using the Consumer Price Index for All Urban Consumers from the Bureau of Labor Statistics.

[42] *See* footnote 43 in Tab B of the staff briefing package for formula used to estimate the price impact.

impacts result in deadweight losses under $6,000 per year, and aggregate to approximately $160,000 over the 30-year study period. In the context of this proposed rule, deadweight loss is not a significant cost and is likely to be masked by other economic factors.

(d) Total Cost Under First Compliance Scenario: Redesigned Floorboard

Table 8 summarizes the cost of the first compliance scenario: the design and production of redesigned floorboards.

TABLE 8—TOTAL COST OF ROV/UTV FIX—SCENARIO I

[Redesigned floorboards]

Cost of redesigned floorboard fix ($M)	Total cost	Present value
Cost of Redesigning Existing Models	$41.02	$39.24
Cost of Production of Redesigned Floorboards	227.09	142.15
Deadweight Loss	0.16	0.10
Cost of First Compliance Scenario	268.26	181.49

2. Second Compliance Scenario: The Cost of a Floorboard Guard

This subsection presents cost estimates for the scenario that all manufacturers produce and install a floorboard guard under the floorboard to comply with the proposed rule. Manufacturers would redesign floorboards to add a 2′ x 2′ x 0.19″ aluminum piece that can prevent debris penetration. Manufacturers would also have to redesign all existing and future ROV/UTV models to allow proper installation of the floorboard guard.

(a) Cost of Redesigning ROV/UTV Models

Staff estimated the cost of redesigning all existing ROV/UTV models to allow for the installation of floorboard guards by multiplying the unit cost of redesigning each existing model [43] by the number of ROV/UTV models to be redesigned. These two cost elements are discussed in more detail below.

i. Unit Cost of Redesigning ROV/UTV Models

Like the estimation method used with the first compliance scenario, staff estimated the unit cost of redesigning existing ROV/UTV models in two steps. First, staff estimated the unit cost of redesigning a single or ''first'' model before cost improvements. Second, staff developed a cost improvement curve to account for the diminishing cost of redesigning through economies of scale.[44]

Staff developed the unit cost of the ''first'' ROV/UTV model redesign from related studies and reports, including a set of laboratory tests performed to measure floorboard resistance at different speeds.[45] Staff produced unit cost estimates for four stages in the design process:

○ Cost of Design Labor

Staff estimated it would take two designers 1 month to produce final blueprints, or approximately 347 hours.[46] The average compensation rate for a designer is $63.96 per hour for a total cost of $22,536 per redesigned ROV/UTV model in 2021 dollars.[47]

○ Cost of Design Production

Staff used information from its study on debris penetration [48] to produce an estimate of the cost per floorboard prototype at $500. Assuming an average of three floorboard prototypes per ROV/UTV model redesign, staff estimated a total production cost of $1,500 per redesigned model.

○ Cost of Design Validation

Staff estimated 2 days of validation testing per each redesigned ROV/UTV model for a total of $59,372.[49]

○ Cost of Compliance Testing

Staff estimated that, on average, two ROV/UTV models would be tested using the test sled method at $14,843 per model.[50]

Based on these inputs, staff estimated the total cost per ''first'' redesigned model is $98,251.[51] This is before considering the cost improvement from scale, specialization, and learning. Staff then used a cost improvement curve that calculates a 5.4 percent reduction in per-unit cost every time the number of units redesigned doubles.[52]

Figure 23 shows the cost improvement trends for each of the design cost components discussed earlier:

[43] The additional design cost to enable the installation of the floorboard guards on new ROV/UTV model designs is considered negligible. This section focuses only in the costs of redesigning existing ROV/UTV models.

[44] Costs improvements are expected as fixed costs spread over additional model redesigns, and the level of experience and specialization redesigning ROV/UTV models for floorboard debris penetration increases.

[45] CPSC Study of Debris Penetration of Recreational Off-Highway Vehicle Floorboards conducted under contract by SEA Limited in 2020/2021.

[46] CPSC staff estimated each redesign would take up to two-person months, with a maximum of four months and a minimum of one month (Notice of Proposed Rulemaking to Establish a Safety Standard for Recreational Off-Highway Vehicles. September 2014). Two-person months are equivalent to 346.67 hours: the average number of hours per month of 173.33 (40 hours a week × 52 weeks a year/12 months) times 2.

[47] The average total hourly compensation for management, professional, and related workers was estimated as of September 2021 at $63.96 (BLS, *https://www.bls.gov/news.release/ecec.t02.htm*). The total cost for two-person months as of September 2021 is then $22,172.8 (346.67 hours times $63.96). Adjusted by the CPI price index, this estimate increases to $22,535.89 ($22,172.8 x 278.802/274.31) as of December 2021 (CPI–U, ID: CUUR0000SA0, *https://data.bls.gov/cgi-bin/surveymost?cu*).

[48] Conducted by SEA Limited under contract with CPSC (Debris Penetration of ROVs Floorboards).

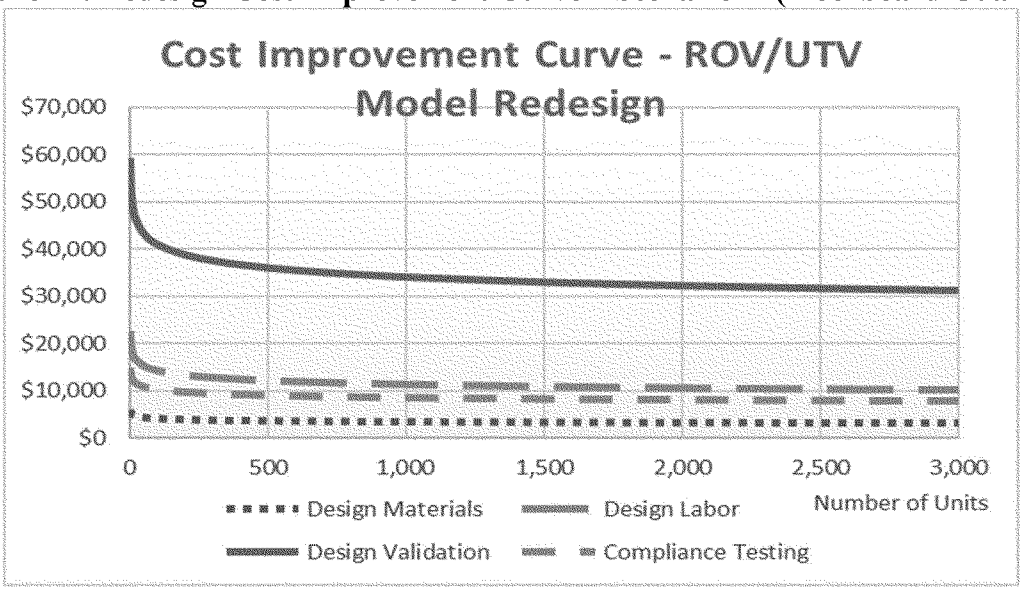
[49] Ibid. SEA Ltd., conducted 5 days of validation testing for a total cost of $138,570, or $27,714 per day as of September 2020. The cost of 2 days of testing brought forward to the end of 2021, using the CPI price index for all urban consumers, is $59,732.36 ($27,714 per day × 2 days × 278.802/260.28).

[50] The cost per day of sled testing, as provided by SEA Ltd., was $27,714 as of September 2020. CPSC staff estimates that, on average, two models would be tested per day. The cost per model as of the end of 2021 is then $14,843 ($27,714 per day/2 models per day × 278.802/260.28).

[51] $98,251.34 = $22,535.89 (labor cost) + $1,500 (floorboard fabrication) + $59,372.36 (validation testing) + $14,843.09 (compliance testing).

[52] CPSC staff assume the same cost trends for each design cost category. *See* footnote 53 in Tab B of the staff briefing package for the formula used to estimate the slope of the cost improvement curve.

Figure 23: Redesign Cost Improvement Curve – Scenario II (Floorboard Guards)



The average redesign cost per model is dependent on the number of models redesigned each year, which is discussed in the following section.

ii. Number of Redesigned ROV/UTV Models

Staff used the same forecast of the number of new models introduced each year and number of models in use by consumers for this compliance scenario as in the redesigned floorboard scenario.[53] The baseline data in 2019 reveals 107 new ROV/UTV models introduced and 672 existing ROV/UTV models used by consumers.

Staff used the baseline forecast of the number of new models to produce an estimate of new models that would need to be redesigned under the proposed rule.[54] Then, staff used the forecasted number of new models to estimate the number of redesigned models in use every year throughout the 30-year study period by applying a statistical distribution of model life rates.[55]

The forecast matches almost exactly the chart shown in Figure 16 with 762 ROV/UTV models in use in 2023. This value is the number of existing models that manufacturers would be required to redesign.[56] Staff assumed that manufacturers would spread the redesign activities over a period of 2 years, at 381 ROV/UTV models per year. The improvement over the cost of the ''first'' redesigned model would bring down the average cost per model from $98,251 to an average of $51,042 each year. Consequently, the ROV/UTV industry would incur redesign costs of $19.43 million in 2024 and 2025, respectively, as shown in Table 9:

TABLE 9—REDESIGN COSTS IN SCENARIO II

[Floorboard guards]

Floorboard guard scenario	Cost per redesigned model ($M)	Number of ROV/UTV models	ROV/UTV industry cost ($M)
2024	$0.051	381	$19.43
2025	0.051	381	19.43
Overall	0.051	762	38.87
Present Value	.....	.....	37.19

(b) Cost of Manufacturing ROV/UTV Floorboard Guards

Staff estimated the cost of producing and installing [57] floorboards with floorboard guards on all new ROVs/UTVs by multiplying the additional cost per floorboard guards by the number of new ROVs/UTVs that would have a floorboard guard installed.

[53] The same baseline number of models is used for both compliance scenarios (see baseline data and forecast in the corresponding section of the first compliance scenario -''redesign floorboards''- for additional context). The number of models sold in each year of this period was estimated using the North American Utility Vehicle Sales from 1991 to 2019, excluding models design for children.

[54] CPSC staff developed a second set of forecasts from the baseline forecast by considering the market impacts of the proposed rule. Due to the relatively small cost impacts of the proposed rule, the difference between the two sets of forecasts is not noticeable in the chart.

[55] As discussed, a two-parameter gamma distribution was used to forecast model survival rates with shape parameter of 5 and scale parameter of 1, consistent with an estimated mean model duration of 5 years. The model life rates distribution is the converse of the model survival rates distribution.

[56] All existing and new models will have to include a floorboard solution—a floorboard guard in this case that complies with the requirements of the new standard—in order to be sold to new/prospective ROV/UTV customers. However, the additional cost of redesigning new models is considered negligible based on discussions with manufacturers, so the focus of the estimate is on redesigned existing models only.

[57] Like the first compliance scenario, the additional cost of installing floorboard guards in new ROVs/UTVs is considered negligible. The focus of the section is on the additional production costs of floorboard guards (more specifically the additional materials).

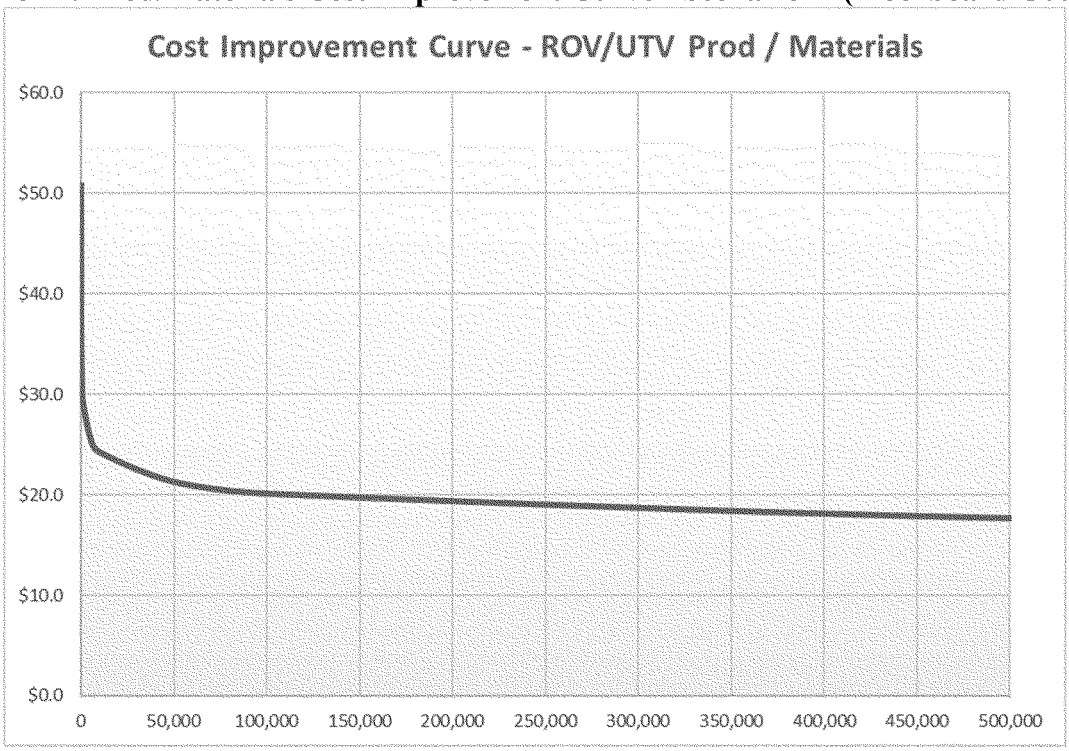
i. Unit Cost of Adding a Floorboard Guard

Staff estimated the unit cost of adding floorboard guards to floorboards in two steps. First, staff estimated the additional cost of the ''first'' floorboard with a floorboard guard in it, before any cost improvements.[58] Second, staff developed an estimate of the average cost of a floorboard using a floorboard guard considering the efficiencies from economies of scale, by calibrating and applying a cost improvement curve.

Staff estimated the incremental cost of the ''first'' floorboard with a floorboard guard to be $51.09, based on the cost of the materials considering a 2′ x 2′ x 0.19′ aluminum sheet.[59] Staff then applied the cost curve, which calculates a 5.5 percent reduction in average cost every time the number of ROVs/UTVs with a floorboard guard doubles.[60]

Figure 24 shows the cost improvement curve at different scales of production:

Figure 24: Prod/Materials Cost Improvement Curve - Scenario II (Floorboard Guards)



This chart shows that with 100,000 floorboards produced, the cost drops to an average of about $20. In most years, the sales of new ROV/UTVs are greater than 500,000 units, which reduces the average cost to slightly above $17 per new ROV/UTV.

ii. Number of ROVs/UTVs Sold

The baseline forecasts of sale volumes of new ROVs/UTVs and the number of ROVs/UTVs in use by consumers in section VIII.D.1.(a)(ii), Number of Redesigned ROV/UTV Models, are also applicable to this compliance scenario.[61] The baseline data in 2019 show 429,135 new ROVs/UTVs sold and 2.3 million ROVs/UTVs in use by consumers.

Staff used the baseline forecast of the number of new ROVs/UTVs to produce an estimate of new ROVs/UTVs under the proposed rule.[62] Staff also forecasted the number of ROVs/UTVs in use by applying a statistical distribution of product life rates [63] to the total fleet. The forecasted volumes match, almost exactly, the volumes shown in Figure 16. Additionally, Figure 25 shows the number of floorboards produced over time and the corresponding cost per unit.

[58] Cost improvements are expected due to process improvements and reuse of designs, additional learning and experience in the production process, and economies of scale in the acquisition of materials.

[59] CPSC staff estimate this cost applying a 50% manufacturer discount to the Grainger retail price for an aluminum sheet of these characteristics, price at $102.17 as of the end of 2021.

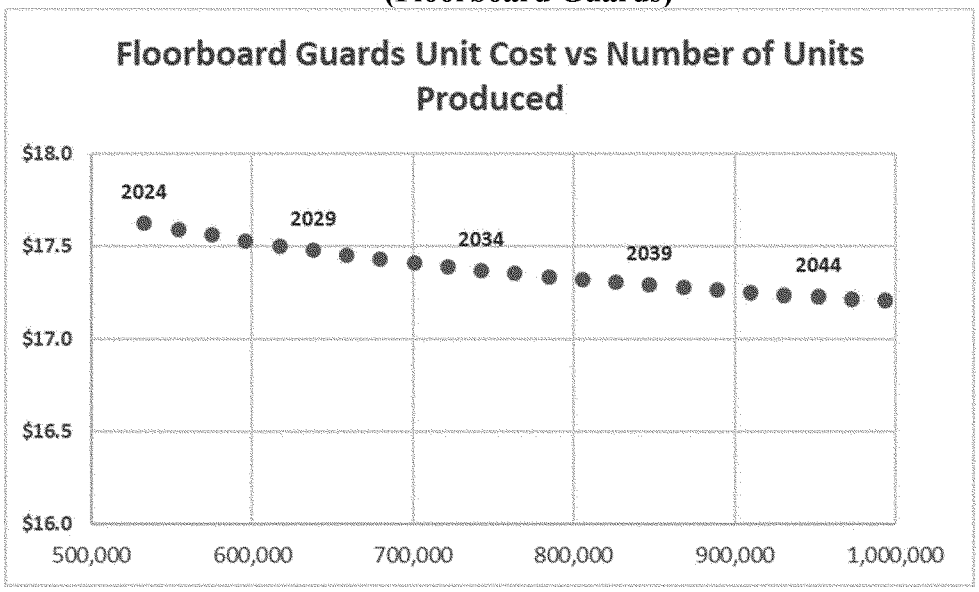
[60] *See* footnote 61 in Tab B of the staff briefing package for the formula used to estimate the cost improvement curve.

[61] The number of ROVs/UTVs sold each year from 1998 to 2019, was estimated using the North American Utility Vehicle Sales database; it excludes ROVs/UTVs sold for the use of children (*e.g.,* the ''Mini''). The baseline data and forecasts applied to both compliance scenarios.

[62] CPSC staff developed a second set of forecasts subtracting from the baseline forecast of sales the volume impacts of the proposed rule. Due to the relatively small price, and hence, volume impacts of the proposed rule, the difference between the two sets of forecasts is barely noticeable.

[63] A two-parameter gamma distribution was used to forecast ROV/UTV survival rates with a shape parameter of 6 and a scale parameter of 1, corresponding to a mean ROV/UTV duration of 6 years. The distribution of product life rates is the converse of the distribution of survival rates.

Figure 25: Additional Floorboard Unit Cost by Production Volume – Scenario II (Floorboard Guards)



To calculate the total incremental cost of producing and installing floorboard guards in every new ROV/UTV over the 30-year study period, staff multiplied the average cost of a floorboard guard by the number of ROVs/UTVs produced. Staff calculated this cost to be $430.33 million. The equivalent present value at a 3 percent discount rate is $266.94 million. Table 10 summarizes the cost of producing ROV/UTV floorboards with floorboard guards: [64]

TABLE 10—ADDITIONAL COST OF FLOORBOARDS ON ROV/UTVS—SCENARIO II

[Floorboard guards]

Floorboard guard scenario	Average cost per floorboard guard	Millions of new ROVs/UTVs with floorboard guard	Cost of floorboard guard ($M)
2024–2053	$17.14	25.10	$430.33
Present Value	.....	.....	266.94

Table 11 summarizes the total cost of implementing the floorboard guards fix to debris penetration over the 30-year study period:

TABLE 11—REDESIGN AND PRODUCTION COST—SCENARIO II

[Floorboard guards]

Cost of floorboard guard scenario	Average cost per ROV/UTV	Millions of new ROVs/ UTVs	Cost of floorboard guard ($M)	Present value ($M)
Cost of Redesigning Existing Models	$1.55	25.10	$38.87	$37.19
Cost of Producing Redesigned Floorboards	17.14	25.10	430.33	266.94
Cost of Redesigning Floorboard Fix	18.69	25.10	469.20	304.13

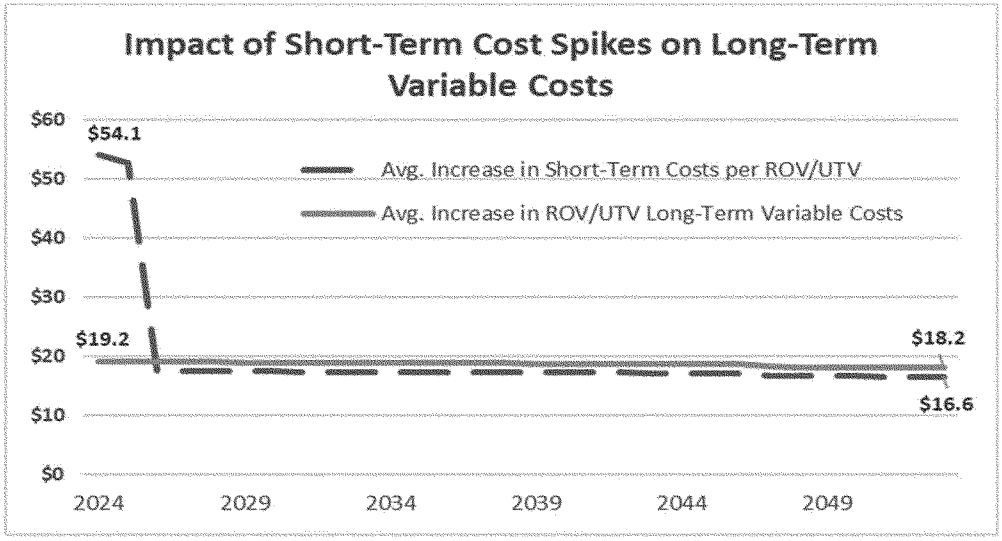
(c) Deadweight Loss

Like the first compliance scenario, staff estimated the annual average increased cost of production associated with the new standard, the resulting increase in average prices, and reduction in volumes traded in the ROV/UTV market. Then, staff used those estimates to calculate the deadweight loss for each year of the analysis.

Staff calculated the expected changes in long-term variable costs by spreading out the spikes in short-term costs, as shown in Figure 26:

[64] Note that the number of ROVs/UTVs equipped with floorboards containing deflectors shields is slightly below the number of ROVs/UTVs under the first alternative with ''redesigned floorboards.'' The reason for this slight difference is that the implementation of the floorboard guard solution is slightly more expensive, causing a slimly steeper increase in prices, and hence, a slightly reduced sales volume.

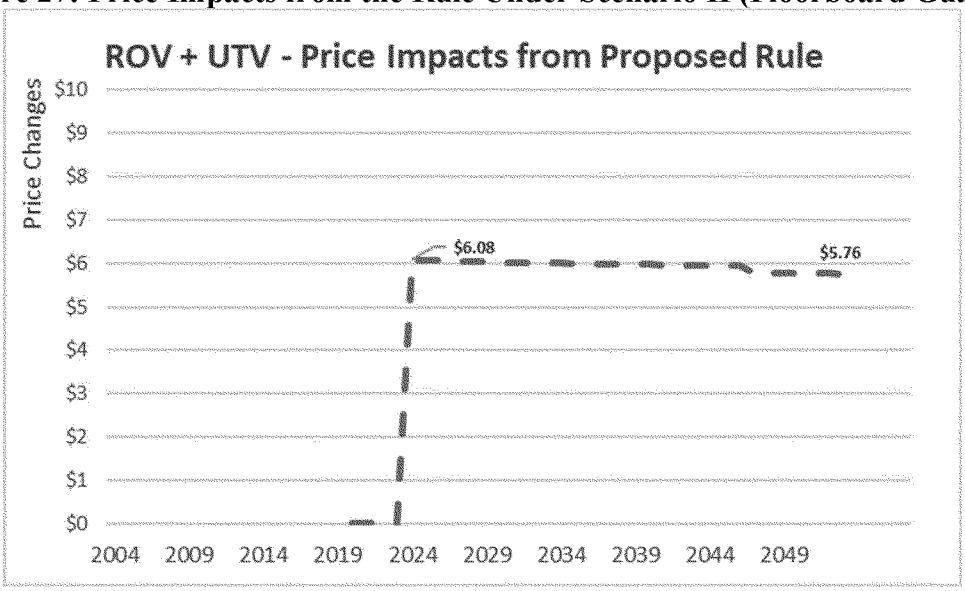
Figure 26: Long-Term Impact of Short-Term Cost Spikes – Scenario II (Floorboard Guards)



Then, staff augmented the estimated long-term cost presented in Figure 22 by a 38 percent [65] wholesaler distribution markup to simulate the market impact of the proposed rule on the ROV/UTV supply curve.

Staff used the same forecasted baseline prices used in the first scenario–along with price sensitivities of demand and supply–to estimate price impacts of the proposed rule in this scenario.

Figure 27: Price Impacts from the Rule Under Scenario II (Floorboard Guards)



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As Figure 27 shows, the impact of the proposed rule on the ROV/UTV price is slightly higher than in the first compliance scenario, but it is still very small, accounting for less than 0.045 percent of the average market price.[66] Consequently, the change in market volume would also be very small. The small price and quantity impacts result in deadweight losses per year under $20,000, and aggregates to approximately $470,000 over the 30-year study period. In the context of this proposed rule, the impact of deadweight loss is not significant.

(d) Total Cost Under Second Compliance Scenario: Floorboard Guards

Table 12 summarizes the total cost of the second compliance scenario over the 30-year study period.

[65] Goldberg 1995.

[66] *See* footnote 67 in Tab B of the staff briefing package for the formula used to estimate the price impact.

TABLE 12—TOTAL COST OF ROV/UTV FIX—SCENARIO II

[Floorboard Guards]

Cost of floorboard guard fix ($M)	Total cost	Present value at 3%
Cost of Redesigning Existing Models	$38.87	$37.19
Cost of Production of Floorboard Guards	430.33	266.94
Deadweight Loss	0.47	0.30
Cost of Second Compliance Scenario	469.67	304.43

3. Annualized and Per Vehicle, in Use Cost of the Proposed Rule

In this regulatory assessment, staff considered two types of solutions to the debris penetration hazard under the proposed rule: (i) fully redesigned floorboards that utilize most of the material in original floorboards, and (ii) floorboards with floorboard guards. Both scenarios require manufacturers to redesign existing models to allow for proper installation of the floorboard solution of choice. Staff estimated in each scenario the cost of all firms fully deploying that solution solely. Table 13 below summarizes the aggregate costs of each scenario over the 30-year study period, and their respective present value using a 3 percent discount rate.

TABLE 13—TOTAL 30-YEAR COST OF IMPLEMENTING THE DRAFT PROPOSED RULE

Cost of debris penetration fix ($M)	Cost of redesigned floorboard scenario	Present value of redesigned floorboards scenario	Cost of floorboard guards scenario	Present value of floorboard guards scenario
Cost of Redesigning Existing Models	$41.02	$39.24	$38.87	$37.19
Cost of Production of Redesigned Floorboards	227.09	142.15	430.33	266.94
Deadweight Loss	0.16	0.10	0.47	0.30
Cost of Compliance	268.26	181.49	469.67	304.43

The total 30-year cost estimates of the ROV/UTV debris penetration compliance are $268.3 million and $469.7 million, for redesigned floorboards or the floorboard guards, respectively. In practice, manufacturers may choose to implement either solution, or a different solution that proves more cost-effective. The corresponding present values for the 30-year cost range is between $181.5 to $304.4 million.

Using the cost estimates from each scenario, staff calculated the annualized cost[67] and the cost per-product. The average annual cost[68] is $8.94 million for the redesigned floorboards scenario and $15.66 million for the floorboard guard scenario. The annualized costs (annual costs using a discount rate for the time value of money) is $9.26 million at a 3 percent discount rate for the redesigned floorboards scenario and $15.53 million for the floorboard guard scenario.

Staff estimated per-unit cost by dividing the total cost of the scenario (undiscounted and discounted) by the number of ROVs and UTVs in each compliance scenario over the 30-year period. The total number of ROVs & UTVs with the debris penetration fix is 25.12 million in the redesigned floorboard scenario and 25.10 in the floorboard guard[69] scenario. In the redesigned floorboard scenario, the cost per unit is $10.68 undiscounted and $7.23 discounted at 3 percent. In the floorboard guard scenario, the cost per unit is $18.71 undiscounted and $12.13 discounted at 3 percent.

Table 14 presents the findings from the cost assessment of this proposed rule for both the annualized and per-product perspectives.

TABLE 14—AVERAGE ANNUAL COST OF DRAFT PROPOSED RULE UNDER EACH SCENARIO

Cost of compliance with proposed rule	Average annual cost—undiscounted ($M)	Annualized cost at 3%($M)	Cost per ROV/UTV—undiscounted ($)	Cost per ROV/UTV—discounted at 3% ($)
Scenario 1: Redesigning Floorboards	$8.94	$9.26	$10.68	$7.23
Scenario 2: Floorboard Guard	15.66	15.53	18.71	12.13

E. Benefits and Costs Analysis

Staff compared estimated benefits and costs to assess the relation between benefits and costs of the proposed rule. Table 15 below displays metrics for both the benefits and costs of the proposed rule. It takes the difference and ratio of benefits and costs to assess the cost-benefit relationship.

[67] CPSC staff converted the aggregate 30-year costs into present values—an amount in today's dollars that is equivalent to the 30-year stream of costs-by discounting all future amounts at a 3 percent discount rate (a rate that accounts for the time value of money and the opportunity costs). Then, CPSC staff converted these present values into constant annual equivalents, or fixed amounts of cost per year over the 30-year period that represent the constant cost in today's dollars of implementing of the proposed rule.

[68] This is the undiscounted total costs of each compliance alternative divided by 30, the number of years in the period of analysis.

[69] The total number of ROVs & UTVs is slightly different due to a small difference in the market price impacts of each scenario.

TABLE 15—NET BENEFITS OF DRAFT PROPOSED RULE UNDER EACH SCENARIO

Net benefits of proposed rule—($M)	Annualized cost—redesigned floorboards	Present value—redesigned floorboards	Annualized cost—floorboard guards	Present value—floorboard guards
Benefits	$15.47	$303.13	$15.47	$303.15
Costs	9.26	181.49	15.53	304.43
Net Benefits (Benefits − Cost)	6.21	121.64	−0.06	−1.28
B/C Ratio (Benefits ÷ Cost)	1.67	1.67	1.00	1.00

Finally, Table 16 compares the benefits and costs of each compliance scenario on a per-vehicle basis to add a marginal value perspective.

TABLE 16—PER-VEHICLE NET BENEFITS OF DRAFT PROPOSED RULE UNDER EACH SCENARIO

Net benefits of proposed rule—$ per vehicle	Average undiscounted—redesigned floorboards	Annualized costs at 3%—redesigned floorboards	Average undiscounted—floorboard guards	Annualized costs at 3%—floorboard guards
Benefits	$20.32	$12.07	$20.34	$12.08
Costs	10.68	7.23	18.71	12.13
Net Benefits (Benefits − Cost)	9.64	4.84	1.63	−0.05
B/C Ratio (Benefits ÷ Cost)	1.90	1.67	1.09	1.0

1. Uncertainty and Sensitivity Analysis

Uncertainty is inherent in any estimate or forecast of future events. This preliminary regulatory analysis estimated future benefits and costs associated with promulgating the proposed rule using the best readily available information and data. However, multiple sources of uncertainty may have an impact on the accuracy of the estimates developed for this regulatory assessment:

- A first source of uncertainty is the use of historical data to extrapolate future trends, since it is clearly not certain that the future will follow historical patterns; the farther into the future, the more uncertain is the estimate. Staff applied statistical methods to mitigate this uncertainty to the extent possible.
- A second source of uncertainty is the use of assumptions to overcome the issue of data availability. Staff carefully developed these assumptions based on subject matter expert inputs and literature review; however, they may not perfectly reflect the central trends, nor the full spectrum of possible occurrences in the real world. Staff developed a sensitivity analysis on a few key inputs to mitigate this uncertainty.
- A third source of estimate uncertainty is the omission of certain benefits and costs. For instance, CPSC did not extrapolate the number of incidents to the national level due to the number of recorded incidents of debris penetration being lower than the publication criteria established in NEISS. This may result in a significant underestimation of the benefits of the rule. Likewise, CPSC may have overlooked certain costs of implementing the proposed rule. The Commission requests comment regarding benefits and costs not addressed in this analysis.

The rest of this section describes the results of a sensitivity analysis on two assumptions used in this preliminary regulatory analysis: (1) the efficacy of the proposed rule as a percent of reduction in the number of debris penetration incidents, and (2) the time horizon of the study period. In the preliminary regulatory analysis, staff assumed the proposed rule assumed 100 percent efficacy in preventing debris penetration from compliant vehicles and used a 30-year time horizon for its study period.

Table 17 presents estimates of benefits and costs at two different levels of efficacy of the proposed rule in reducing the number of incidents. Table 17 shows that for the redesign floorboard scenario, the benefits exceed the costs, even at a 60 percent efficacy. In the case of the floorboard guard scenario, the benefits essentially match the cost at a 95 percent efficacy but are lower than the costs when the efficacy of the proposed rule is at 60 percent.

TABLE 17—NET BENEFIT SENSITIVITY TO THE EFFICACY OF THE PROPOSED RULE UNDER EACH SCENARIO [70]

Net benefits ($M)	Redesigned floorboards		Floorboard guards	
	95%	60%	95%	60%
Benefits	$303.13	$191.64	$303.15	$191.64
Costs	($181.49)	($181.49)	($304.43)	($304.43)
Net Benefits	$121.64	$10.14	($1.28)	($112.79)
B/C Ratio	1.67	1.06	1.00	0.63

[70] The small difference in benefits between the redesigned-floorboards and floorboard-guards scenarios is the result of a small but different market price impact in each case. The floorboard-guard scenario is costlier and, therefore, produces a larger price increase that leads to a smaller number of vehicles under the proposed rule, and larger benefits with respect to the baseline situation without the rule.

Table 18 presents estimates of benefits and costs, and sensitivity of the net benefits to the length of the study period. It compares the 30-year study period used in this regulatory assessment with a 20-year sensitivity test (2024–2043). Table 18 shows that under the redesigned floorboard scenario, the benefits exceed the cost at both lengths of time. In the case of the floorboard guard scenario, the costs exceed the benefits if the period of analysis is reduced to 20 years.

TABLE 18—NET BENEFIT SENSITIVITY TO THE PERIOD OF ANALYSIS OF THE PROPOSED RULE UNDER EACH SCENARIO [71]

Net benefits ($M)	Redesigned floorboards		Floorboard guards	
	30-Year period	20-Year period	30-Year period	20-Year period
Benefits	$303.13	$194.37	$303.15	$194.37
Costs	($181.49)	($139.49)	($304.43)	($221.58)
Net Benefits	$121.64	$54.88	($1.28)	($27.21)
B/C Ratio	1.67	1.39	1.00	0.88

F. Staff Evaluation of the Voluntary Standards

In developing the proposed rule, staff considered whether the Commission could rely on the current voluntary standards. The current voluntary standards for ROVs/UTVs are:

- ANSI/ROHVA 1–2016 Recreational Off-Highway Vehicles; and
- ANSI/OPEI B71.9–2016—American National Standard for Multipurpose Off-Highway Utility Vehicles.

1. ANSI/ROHVA–1

In 2016, ROHVA published the latest version of the standard—ANSI/ROHVA–1—2016, *American National Standard for Recreational Off-Highway Vehicles.* The first version of the standard was published in 2010. ROHVA member companies include Can-AM/BRP, Honda, Deere and Co., Kawasaki, Mahindra, Polaris, Textron Specialized Vehicles (formerly Artic Cat) and Yamaha. Work on ANSI/ROHVA 1 started in 2008, and work completed with publication of ANSI/ROHVA 1–2010. The standard was immediately opened for revision, and a revised standard, ANSI/ROHVA 1–2011, was published in July 2011.

The ANSI/ROHVA–1–2016 standard defines an ''ROV'' as an off-highway vehicle with a minimum top speed of 30 mph, no limit on maximum speed, a maximum engine displacement of 1000 cc, and a maximum Gross Vehicle Weight Rating (GVWR) of 3,750 lbs. The standard specifies requirements for service brakes, parking brakes, and controls specifications for engine, drive train, and steering. Lighting equipment, spark arresters, and warning labels are also covered by the standard.

The ANSI/ROHVA–1–2016 standard has requirements for rollover protective structures (ROPS), lateral stability, vehicle handling, and occupant retention systems that include seat belts and passive restraints.

The ANSI/ROHVA–1–2016 standard does not have requirements for resistance to debris penetration. The vehicles defined by the ANSI/ROHVA 1–2016 standard are included in the definition of ''ROVs'' in the proposed rule and subject to the requirements of the proposed rule.

2. ANSI/OPEI B71.9

In March 2012, OPEI published the ANSI/OPEI B71.9–2012, *American National Standard for Multipurpose Off-Highway Utility Vehicles,* which is a voluntary standard applicable to ROVs and UTVs. OPEI member companies include Club Car, Deere and Co., Excel Industries, Honda, Intimidator, Jacobsen, Kawasaki, Kioti, Kubota, Mahindra, MTD, Polaris, Toro, Yanmar, and Yamaha. Work on ANSI/OPEI B71.9 was started in 2008 and completed with the publication of ANSI/OPEI B71.9–2012 in March 2012.

The most recent edition of the OPEI standard was published in 2016; it provides a definition of ''multipurpose off-highway utility vehicles (MOHUVs),'' which is very similar to the ROHVA definition of ''ROVs.'' The OPEI definition of ''MOHUV'' requires a minimum top speed in excess of 25 mph. The OPEI definition of ''MOHUV'' requires a minimum cargo load of 350 lbs. and limits GVWR to 4,000 lbs. The standard specifies requirements for service brakes, parking brakes or mechanisms, and vehicle controls. Lighting equipment, spark arresters, and warning labels are also covered by the standard. MOHUVs can be ROVs (those vehicles with top speeds greater than 30 mph) or UTVs (those vehicles with top speeds of less than 30 mph).

The ANSI/OPEI B71.9–2016 standard does not have requirements to guard against the debris penetration risks. The vehicles defined by the ANSI/OPEI B71.9–2016 standard are included in the definition of ''ROVs'' and ''UTVs'' in the proposed rule and subject to the requirements of the proposed rule.

G. Alternatives to the Proposed Rule

The Commission considered four alternatives to the proposed rule: (1) conduct marketing campaigns and recalls instead of promulgating a final rule; (2) rely on voluntary standards development; (3) limit ROV and UTV speed to a maximum of 10 miles per hour, and (4) implement a small batch exemption. The Commission is not adopting these alternatives, for the following reasons:

1. Conduct Marketing Campaigns and Recalls Instead of Promulgating a Final Rule

The Commission could issue news releases or utilize other information and marketing techniques to warn consumers about debris penetration hazards associated with ROVs and UTVs instead of issuing a mandatory rule. With this alternative, most vehicles would comply with one of the two voluntary ROV standards, and ROV and UTV manufacturers would incur no costs to modify or test their vehicles to comply with the proposed rule. However, neither voluntary standard includes a performance standard requirement to prevent debris penetration into the occupant area.

Information and marketing campaigns are unlikely to reduce the number of injuries and societal costs associated with ROV/UTV debris penetration hazard. ROV/UTV users, aware of the debris penetration hazard, may modify their behavior, drive more alertly, reduce driving speed, and avoid debris, when possible. However, given that encountering debris in an off-highway environment is largely unavoidable, and

[71] The small difference in benefits between the redesigned-floorboards and floorboard-guards scenarios is the result of a small but different market price impact in each case. The floorboard-guard scenario is costlier, and therefore, produces a larger price increase that leads to a smaller number of vehicles under the proposed rule, and larger benefits regarding the baseline situation without the rule.

that debris penetration is possible at speeds as low as 2 mph, information and marketing campaigns are unlikely to substantially reduce risk of injury.

Recalls only apply to an individual manufacturer and product, do not extend to similar products, and occur only after consumers have purchased and used such products and have been exposed to and potentially injured or killed by the hazard. Additionally, recalls can only address products that are already on the market and cannot prevent unsafe products from entering the market.

Therefore, much of the estimated $18.02 million annualized societal costs would continue to be incurred by consumers in the form of deaths and injuries. In addition, this alternative would require either additional funding from Congress out of the Federal Treasury, or reallocation of CPSC's appropriations, such that other safety-related activities that benefit the public are not undertaken. Both options entail additional costs to society. For this reason, the Commission is not adopting this alternative.

2. Rely on Voluntary Standards Development

The Commission could direct staff to work with voluntary standards development organizations to address the hazard. This alternative would allow ROHVA and OPEI member firms to determine collectively the degree, manner, and timing of debris penetration hazard mitigation, which could delay or reduce costs incurred by these firms to address the hazard. ROHVA and OPEI member firms supplied approximately 95 percent of the ROVs and UTVs sold in the United States in 2019. Non-member firms may choose not to comply with ROHVA and OPEI voluntary standards, and therefore, incur no associated costs. However, staff has been discussing debris penetration hazards with ROHVA and OPEI since 2018, without them making progress on standard development to adequately address this hazard pattern. Staff will continue to work with ROHVA and OPEI on voluntary standards, but do not know if, or when, a standard will be developed to adequately address this hazard. Until such voluntary standards are developed, staff expects the number and societal costs of injuries and fatalities associated with debris penetration hazards to remain at or near current levels on a per-vehicle basis. Therefore, the Commission is not adopting this alternative.

3. Limiting ROV and UTV Speed to a Maximum of 10 Miles per Hour

In making their recommendation regarding this alternative, CPSC staff weighed both quantifiable factors and unquantifiable factors. If the Commission promulgated a rule limiting ROV and UTV speed to a maximum of 10 miles per hour, staff expects benefits, in the form of reduced societal costs, to be substantially less than that of the proposed rule, as testing conducted by SEA, Ltd., indicated many ROVs and UTVs are subject to debris penetration into the occupant area at speeds less than 10 mile per hour. Therefore, although staff would expect costs to manufacturers to be less, quantifiable net benefits would be less, as well. In addition, setting the maximum speed at 10 mph could have a negative impact on consumer acceptance of the requirement and result in costs, including time, inconvenience, and reduced consumer satisfaction, leading to substantial lost consumer surplus and utility of the product. Considering both the quantifiable and unquantifiable costs and benefits, staff determined that the net benefit of this alternative is less than that of the proposed rule. Therefore, the Commission is not adopting this alternative.

4. Small Batch Exemption

The Commission could exclude firms that produce or import small numbers of ROVs and/or UTVs from the proposed rule's performance requirements. In this case, most small businesses would not suffer adverse economic impacts. Small manufacturers supplied approximately 1.3 percent of ROVs and UTVs sold in the United States in 2019. Small distributers of foreign-manufactured ROVs and UTVs accounted for 2.4 percent of U.S. sales in 2019. Combined, small businesses comprised approximately 3.7 percent of the 2019 U.S. ROV and UTV market. The Commission is not aware of any fatal or nonfatal debris penetration-related injuries associated with ROVs and UTVs manufactured or imported by small firms. At the same time, however, the Commission is unaware of any engineering differences between vehicles manufactured by small manufacturers versus large ones, and there are no data to suggest that the risk of injury posed by vehicles manufactured or supplied by small businesses is any different than the risk posed by vehicles manufactured or supplied by large firms. Based on this, the Commission is not adopting a small batch exemption.

IX. Initial Regulatory Flexibility Analysis

Whenever an agency publishes an NPR, Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to prepare an initial regulatory flexibility analysis (IRFA), unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The IRFA, or a summary of it, must be published in the **Federal Register** with the proposed rule. Under Section 603(b) of the RFA, each IRFA must address:

(1) a description of why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(5) an identification to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.

The IRFA must also describe any significant alternatives to the proposed rule that would accomplish the stated objectives and that minimize any significant economic impact on small entities.

A. Reason for Agency Action

As described above, the intent of this rulemaking is to reduce deaths and injuries resulting from the debris penetration into the occupant area of ROVs and UTVs.

B. Objectives of and Legal Basis for the Rule

The Commission proposes this rule to reduce the risk of death and injury associated with debris penetration into the occupant area of ROVs and UTVs. The rule is promulgated under the authority of the Consumer Product Safety Act (CPSA).

C. Small Entities to Which the Rule Will Apply

The proposed rule would apply to all manufacturers and importers of ROVs and UTVs. ROV and UTV manufacturers may be classified in the North American Industrial Classification (NAICS) category 336999 (All Other Transportation Equipment

Manufacturing), or possibly, 336112 (Light Truck and Utility Vehicle Manufacturing). The Small Business Administration (SBA) size standard for these NAICS classifications are 1,000 employees and 1,500 employees, respectively. Of the 35 identified ROV and UTV manufacturers, the Commission identified seven U.S. ROV and UTV manufacturers (20 percent of manufacturers) with fewer than 1,500 employees, which, therefore, meet the SBA threshold for small business.

Importers of ROVs and UTVs could be wholesale or retail distributers. ROV and UTV wholesalers may be classified in NAICS categories 423110 (Automobile and Other Motor Vehicle Merchant Wholesalers) or 441228 (Motorcycle, ATV, and All Other Motor Vehicle Dealers). The SBA size standard for NAICS classification 423110 is 250 employees. The SBA size standard for NAICS classification 441228 is $35 million. Of the 48 identified distributers/brands, of which 26 might be foreign importers, the Commission identified 19 firms (39.6 percent of distributer/brands) distributing foreign-manufactured (primarily Chinese) ROVs and UTVs in 2019, that could be considered small businesses.[72]

D. Compliance, Reporting, and Record-Keeping Requirements of Proposed Rule

The proposed rule would establish a performance requirement for ROVs and UTVs and a test procedure that suppliers would have to meet to sell in the United States.

In 2021, the Commission contracted SEA to conduct testing related to the ROV and UTV debris penetration hazard. SEA tested a small, non-representative sample of ROV and UTV models with, and without, after-market guards. None of the models met the performance requirements of the proposed rule when operating without aftermarket guards. Therefore, the Commission expects most small (and large) ROV and UTV manufacturers would incur costs associated with bringing their vehicles into compliance with the proposed rule, as well as costs related to testing and issuing a general certificate of conformity (GCC).

In accordance with Section 14 of the CPSA, manufacturers would have to issue a GCC for each ROV and UTV model, certifying that the model complies with the proposed rule. According to Section 14 of CPSA, GCCs must be based on a test of each product or a reasonable testing program; and GCCs must be provided to all distributors or retailers of the product. The manufacturer would have to comply with 16 CFR part 1110 concerning the content of the GCC, retention of the associated records, and any other applicable requirement.

E. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

At the time of this document's publication, no other federal rules duplicate, overlap, or conflict with the proposed rule.

F. Potential Impact on Small Entities

One purpose of the IRFA is to evaluate the impact of a regulatory action on small entities and to determine whether that impact is economically significant. Although the SBA allows considerable flexibility in determining ''economically significant,'' CPSC typically uses 1 percent of gross revenue as the threshold for determining ''economically significant.'' When CPSC staff cannot demonstrate that the impact is lower than 1 percent of gross revenue, staff prepares an initial regulatory flexibility analysis.[73]

1. Impact on Small Manufacturers

The preliminary regulatory analysis in Section VIII of this preamble discusses costs more fully. Based on that analysis, to achieve compliance with the proposed rule's performance requirements, ROV and UTV suppliers would incur costs from redesigning, retooling, and testing. Staff estimated this cost to be $51,050 per model in the first year.[74] This figure includes $9,361 in testing costs per model. Staff estimated the additional production cost for labor and material to be $29.23 per vehicle produced in the first year. Staff does not anticipate new reporting or recordkeeping requirements from this rule.

Staff identified seven ROV and UTV manufacturers that meet SBA size standards for small businesses. Staff applied both the per-model and per-vehicle costs to each manufacturer's number of models and unit sales in 2019. Staff found the initial cost to comply with the proposed rule exceeds 1 percent of reported annual revenue for five of the seven manufacturers identified as small businesses. For these five ROV and UTV manufacturers, the economic impact of the proposed rule is expected to be significant.

2. Impact on Small Importers

Staff identified 14 possible importers of ROVs and UTVs from foreign suppliers that would be considered small businesses based on SBA size standards. Staff identified an additional five importers for which a size determination could not be made, but that are likely small based on the number of models and units sold. A small importer would be impacted adversely by the proposed rule if its foreign supplier withdrew from the U.S. market, rather than incur the cost of compliance. Importers would also be impacted adversely if a foreign manufacturer failed to provide a GCC and had to perform its own testing for compliance. If sales of ROVs and UTVs are a substantial source of the importer's business, and the importer cannot find an alternative supplier of ROVs and UTVs, the economic impact on these firms might be significant. However, the U.S. ROV and UTV market has grown at an annual rate of 13.5 percent since 1998; accordingly, it is unlikely that foreign manufacturers would exit such a fast-growing market. ROV and UTV importers also import other products, such as scooters, motorcycles, and other powersport equipment. For these firms, any decline in ROV and UTV sales and revenue may be partially or fully offset by increasing sales and revenues derived from these other products.

Small importers would be responsible for issuing a GCC certifying that their ROVs and UTVs comply with the rule's requirements. However, importers may issue GCCs based upon certifications provided by or testing performed by their suppliers. The impact on small importers whose suppliers provide GCCs should not be significant. If a small importer's supplier does not provide the GCC or testing reports, then the importer would have to certify each model for conformity based on a reasonable testing program. Importers would likely contract with an engineering consulting or testing firm to conduct the certification tests. As discussed in the regulatory analysis, staff estimated certification testing to be $9,361 per model. This would exceed 1 percent of the revenue for 13 of the estimated 19 identified small importers, assuming these firms continue to import the same mix of products as in the pre-regulatory environment.

[72] Staff made these determinations using information from Dun & Bradstreet and ReferenceUSAGov.

[73] The 1 percent of gross revenue threshold is cited as example criteria by the SBA and is commonly used by agencies in determining economic significance (see U.S. Small Business Administration, Office of Advocacy. *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act and Implementing the President's Small Business Agenda and Executive Order 13272.* May 2012, pp 18–20. *http://www.sba.gov/sites/default/files/rfaguide_0512_0.pdf*).

[74] Testing may be performed by the manufacturer by third party engineering consulting or testing firms.

G. Alternatives for Reducing the Adverse Impact on Small Businesses

The Commission considered several alternatives to the proposed rule. These include: (1) conducting marketing campaigns and recalls instead of promulgating a final rule; (2) relying on voluntary standards development; (3) limiting ROV and UTV speed to a maximum of 10 miles per hour, and (4) implementing a small batch exemption. The Commission is not adopting these alternatives for the reasons stated above.

H. Conclusion

The Commission identified seven manufacturers that meet the SBA criteria to be considered small firms. For five of these firms, the estimated cost from the proposed rule exceeds 1 per percent of annual revenue. The Commission assesses that the proposed rule could have a significant economic impact on these five firms.

The Commission estimated that there are 19 importers of foreign manufactured ROVs and UTVs that meet the SBA criteria to be considered small. A small importer whose supplier exits the market, or does not provide the importer a GCC, could experience a significant adverse economic impact. However, given the fast-growing market, the Commission does not anticipate foreign manufacturers will exit the U.S. market, and further, the Commission assumes that foreign manufacturers would provide certifications that small importers could rely on, so that these foreign manufacturers could preserve their sales. Given that assumption, the Commission assesses no significant economic impact on the importers of ROVs and UTVs.

In summary, the proposed rule could have a significant adverse economic impact on five of the seven identified small manufacturers, but it is unlikely to have a significant direct impact on the 19 small importers of ROVs and UTVs.

The Commission welcomes public comments on this IRFA. Small businesses that believe they would be affected by the proposed rule are encouraged to submit comments. The comments should be specific and describe the potential impact, magnitude, and alternatives that could reduce the impact of the proposed rule on small businesses.

X. Environmental Considerations

Generally, the Commission's regulations are considered to have little or no potential for affecting the human environment, and environmental assessments and impact statements are not usually required. See 16 CFR 1021.5(a). The proposed rule is not expected to have an adverse impact on the environment and is considered to fall within the ''categorical exclusion'' for the purposes of the National Environmental Policy Act. 16 CFR 1021.5(c).

XI. Preemption

Executive Order (E.O.) 12988, Civil Justice Reform (Feb. 5, 1996), directs agencies to specify the preemptive effect of a rule in the regulation. 61 FR 4729 (Feb. 7, 1996). The proposed regulation for ROVs and UTVs is issued under authority of the CPSA. 15 U.S.C. 2051–2089. Section 26 of the CPSA provides that ''whenever a consumer product safety standard under this Act is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal Standard.'' 15 U.S.C. 2075(a).

States or political subdivisions of a state may apply for an exemption from preemption regarding a consumer product safety standard, and the Commission may issue a rule granting the exemption if it finds that the state or local standard: (1) provides a significantly higher degree of protection from the risk of injury or illness than the CPSA standard, and (2) does not unduly burden interstate commerce. Id. 2075(c).

Thus, the proposed rule for ROVs and UTVs, if finalized, would preempt non-identical state or local requirements for ROVs and UTVs designed to protect against the same risk of injury, *i.e.,* debris penetration, from ROVs and UTVs.

XII. Certification

Section 14(a) of the CPSA requires that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). A final rule on ROV and UTV debris penetration would subject ROVs and UTVs to this requirement.

XIII. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of a final rule. 5 U.S.C. 553(d). Section 9(g)(1) of the CPSA states that a consumer product safety rule shall specify the date such rule is to take effect, and that the effective date must be at least 30 days after promulgation but cannot exceed 180 days from the date a rule is promulgated, unless the Commission finds, for good cause shown, that a later effective date is in the public interest and publishes its reasons for such finding.

If finalized, the Commission proposes an effective date of 120 days after publication of the final rule. The Commission concludes that ROV/UTV models that do not comply with the resistance to debris penetration requirements can be modified, with design changes to the floorboards and/or augmentation of floorboard guards, in less than 4 person-months (at the most) and concludes that these ROV/UTV models can be tested for compliance in 1 day. Therefore, the Commission concludes that 120 days is a reasonable period for manufacturers to modify vehicles, if necessary; conduct required tests; and analyze test results to ensure compliance with the recommended resistance to debris penetration requirements.

XIV. Proposed Findings

The CPSA requires the Commission to make certain findings when issuing a consumer product safety standard. 15 U.S.C. 2058(f). This section discusses preliminary support for those findings.

A. Degree and Nature of the Risk of Injury

The risk of injury involves debris penetration through the floorboards of ROVs and UTVs. Debris, usually a tree branch, can puncture through the floorboard and enter the occupant area of the vehicle, posing a risk of laceration or impalement to the driver and/or passengers, which can cause severe injury or death.

Between 2009 and 2021, there were a total of 107 incidents found in CPSC databases involving debris penetration associated with ROVs and UTVs. There were 6 reported fatalities and 22 reported injuries related to the known debris penetration incidents. Additionally, there were approximately 630 reports of debris cracking and/or breaking through floorboards and 10 injuries associated with 3 ROV debris penetration recalls.

B. Number of Consumer Products Subject to the Rule

Except for the year 2009, the annual sales of ROVs and UTVs to the United States have increased steadily from an estimated 35,041 units in 1998 to 429,135 units in 2019. In 2019, there were an estimated 2.34 million ROVs and UTVs in use in the United States.

C. Need of the Public for the Products and Probable Effect of Utility, Cost, and Availability of the Product

The effect of the rule will be limited to redesigning the floorboards of the vehicles; thus, the rule is unlikely to have an effect on the utility of ROVs and UTVs.

The effect of the rule on cost and availability of ROVs and UTVs is expected to be minimal. In 2019, the average manufacturer's suggested retail prices (MSRP) of ROVs and UTVs ranged from about $4,599 to $53,700. When weighted by sales volume, the mean MSRP is $13,182 for ROVs and UTVs, which equates to $14,302 in 2021 dollars. The preliminary regulatory analysis estimates a per-unit cost to ROVs and UTVs of the rule to be $10.68 (undiscounted per unit costs of redesigning floorboard for ROVs and UTVs) to $18.71 (undiscounted per unit cost of floorboard guard fix for ROVs and UTVs.) Because this per-unit cost resulting from the rule is a very small percentage of the overall retail price of a ROV or UTV, the rule would have only a minimal effect on the cost or availability of ROVs or UTVs.

D. Other Means To Achieve the Objective of the Proposed Rule, While Minimizing Adverse Effects on Competition and Manufacturing

The proposed requirement of the rule achieves the objective of reducing debris penetration hazards associated with ROVs and UTVs while minimizing the effect on competition and manufacturing. Because the proposed rule implements a performance requirement, manufacturers may choose how best to comply with it. This facilitates, through innovation and competition, the rollout of consumer-driven, cost-effective designs, and helps minimize potential adverse effects on consumer choice, and on manufacturing and commercial practices. Manufacturers may develop ways to comply with the performance requirement that are either less costly than what the preliminary regulatory analysis estimated, or bring more value to the consumer, or both.

In addition, as described in Section XIV.C of this preamble, the per-unit cost resulting from the rule is a very small percentage of the overall retail price of an ROV or UTV. With such a relatively low impact, it is unlikely that ROV or UTV companies would withdraw from the market or that the number of ROV or UTV models will be affected. The Commission preliminarily finds that the proposed rule minimizes impact on competition, marketing, and commercial practices.

E. Unreasonable Risk

The Commission is aware of 107 debris penetration incidents from its NEISS and CPSRMS databases. There were 6 fatalities, 3 of which involved debris penetration into the chest. There were 22 injuries caused by floorboard debris penetration, some of the injuries sustained were severe.

There were 3 Commission recalls of ROVs due to debris penetration hazards, which collectively involved approximately 55,000 vehicles. There were approximately 630 manufacturer-reported incidents of debris cracking or breaking through floorboards and 10 injuries associated with these recalls.

ROVs have maximum speed capabilities greater than 30 mph, and UTVs have maximum speed capabilities between 25 and 30 mph. These vehicles are intended to be driven off-road, including wooded areas or trails, where tree branches and sticks are commonplace. CPSC incident data shows that debris penetration is occurring at speeds less than 10 mph. CPSC testing shows that debris penetration can occur at speeds as low as 2.5 mph on standard OEM ROV and UTV floorboards. In addition, these incidents often occur rapidly and without notice, so that there is little time for the user to react.

Given the potentially severe and unexpected nature of this hazard when using the vehicle as intended, the Commission preliminarily finds that this rule is necessary to prevent an unreasonable risk of injury.

F. Public Interest

The proposed rule is intended to address an unreasonable risk of injury from debris penetration into ROVs and UTVs. As explained in this preamble, adherence to the requirements of the proposed rule would reduce deaths and injuries from ROV and UTV debris penetration incidents in the future; thus, the rule is in the public interest.

G. Voluntary Standards

There are two voluntary standards for ROVs and UTVs:

- ANSI/ROHVA 1–2016 Recreational Off-Highway Vehicles;
- ANSI/OPEI B71.9–2016—American National Standard for Multipurpose Off-Highway Utility Vehicles.

Neither standard has requirements to address debris penetration. For this reason, the Commission preliminarily concludes that the voluntary standards will not adequately address the unreasonable risk of injury associated with debris penetration in ROVs and UTVs.

H. Relationship of Benefits to Costs

The benefits expected from the proposed rule bear a reasonable relationship to its cost. The proposed rule is intended to reduce the impalement and laceration risks of a tree branch penetrating the ROV/UTV floor, and thereby, reduce the societal costs of the resulting injuries and deaths. This reduction in societal costs amounts to $15.47 million per year in projected benefits. The quantifiable benefits of the proposed rule are estimated at $12.08 per ROV/UTV. The costs associated with the proposed requirements to prevent debris penetration are expected to be between $9.26 and $15.53 million per year. On a per-unit basis, the Commission estimates the total costs of the proposed rule to be between $7.23 to $12.13 per ROV/UTV in current dollars.

I. Least-Burdensome Requirement That Would Adequately Reduce the Risk of Injury

As described in Section IX.G of this preamble, the Commission considered less burdensome alternatives to the proposed rule addressing debris penetration in ROVs and UTVs and concluded preliminarily that none of these alternatives would adequately reduce the risk of injury.

XV. Promulgation of a Final Rule

Section 9(d)(1) of the CPSA requires the Commission to promulgate a final consumer product safety rule within 60 days of publishing a proposed rule. 15 U.S.C. 2058(d)(1). Otherwise, the Commission must withdraw the proposed rule if it determines that the rule is not reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product or is not in the public interest. Id. However, the Commission can extend the 60-day period, for good cause shown, if it publishes the reasons for doing so in the **Federal Register**. *Id.*

The Commission finds that there is good cause to extend the 60-day period for this rulemaking. Under both the Administrative Procedure Act and the CPSA, the Commission must provide an opportunity for interested parties to

submit written comments on a proposed rule. 5 U.S.C. 553; 15 U.S.C. 2058(d)(2). The Commission is providing 60 days for interested parties to submit written comments. A shorter comment period may limit the quality and utility of information CPSC receives in comments, particularly for areas where it seeks data and other detailed information that may take time for commenters to compile. Additionally, the CPSA requires the Commission to provide interested parties with an opportunity to make oral presentations of data, views, or arguments. 15 U.S.C. 2058. This requires time for the Commission to arrange a public meeting for this purpose, and provide notice to interested parties in advance of that meeting. After receiving written and oral comments, CPSC staff must have time to review and evaluate those comments.

These factors make it impractical for the Commission to issue a final rule within 60 days of this proposed rule. Moreover, issuing a final rule within 60 days of the NPR may limit commenters' ability to provide useful input on the rule, and CPSC's ability to evaluate and take that information into consideration in developing a final rule. Accordingly, the Commission finds that there is good cause to extend the 60-day period for promulgating the final rule after publication of the proposed rule.

XVI. Request for Comments

We invite all interested persons to submit comments on any aspect of the proposed rule. Specifically, the Commission seeks comments on the following:

- Information regarding any analysis and/or tests done on penetration of the occupant area of ROVs/UTVs;
- Information regarding any analysis on the shape, composition, material properties, etc., of objects that have penetrated occupant area of ROVs/UTVs;
- Information on the speed of the vehicle and the energy associated with penetration of the occupant area of ROVs/UTVs;
- The preliminary regulatory analysis assumes manufacturers would choose between two compliance options ''redesigned floorboards'' or ''floorboard guards;'' but in practice, manufacturers may choose either of these two solutions or may choose a different solution that proves more cost-effective. We request information on the plausibility and likelihood of the options considered, and other solutions not included in the preliminary regulatory analysis.
- Information regarding any potential costs or benefits that were not included the preliminary regulatory analysis;
- Detailed information regarding cost estimates for either of the compliance options in the proposed rule.
- Information regarding the number of small businesses impacted by the proposed rule and the magnitude of the impacts of the proposed rule.
- Comments on the definitions in § 1421.2 of the proposed rule.
- Comments on the testing procedures and protocol of the proposed rule, and potential alternatives.
- Comments regarding the appropriateness of the 120-day effective date, and a quantification of how a 120-day effective date would affect the benefits and costs of the proposed rule.
- Comments regarding the appropriateness of a 30-day effective date, and a quantification of how a 30-day effective date would affect the benefits and costs of the proposed rule.
- Comments regarding the appropriateness of any other period commenters may alternatively recommend, and a quantification of how such effective date(s) would affect the benefits and costs of the proposed rule.
- In estimating the number of debris penetration incidents, injuries, and deaths, how should CPSC incorporate the number of known debris penetration incidents from OHV recall data that differ from the debris penetration incidents available in NEISS and CPSRMS data?
- Are there other sources of data that could allow CPSC to generate a more robust national estimate of incidents, injuries, or deaths associated with OHV debris penetration?
- Given the data cited in the analysis above and any other relevant sources, is it possible to make reliable estimates of the number of incidents, injuries, and deaths associated with OHV debris penetration on a national scale? If not, what are plausible assumptions concerning these figures? What is a reasonable quantification of the benefits tied to avoiding those incidents?
- Are there benefits to the proposed rule arising from the avoidance of damage to OHVs, and elimination of associated repair costs? If so, what is a reasonable quantification of those benefits?

XVII. Notice of Opportunity for Oral Presentation

Section 9 of the CPSA requires the Commission to provide interested parties ''an opportunity for oral presentation of data, views, or arguments.'' 15 U.S.C. 2058(d)(2). The Commission must keep a transcript of such oral presentations. *Id.* Any person interested in making an oral presentation must contact the Commission, as described under the **DATES** and **ADDRESSES** section of this notice.

List of Subjects in 16 CFR Part 1421

Consumer protection, Imports, Administrative practice and procedure, Recreation and recreation areas, Safety.

For the reasons discussed in the preamble, the Commission proposes to amend Title 16 of the Code of Federal Regulations as follows:

■ 1. Add part 1421 to read as follows:

PART 1421—SAFETY STANDARD FOR ROV AND UTV DEBRIS PENETRATION HAZARDS

Sec.

1421.1 Scope, purpose and effective date.
1421.2 Definitions.
1421.3 Requirement.
1421.4 Test procedures.
1421.5 Prohibited stockpiling.
1421.6 Findings.

Authority: 15 U.S.C. 2056, 15 U.S.C. 2058, and 5 U.S.C. 553.

§ 1421.1 Scope, purpose and effective date.

(a) This part 1421, a consumer product safety standard, establishes requirements for recreational off-highway vehicles (ROVs) and utility terrain or utility task vehicles (UTVs), as defined in § 1421.2, to address debris penetration hazards.

(b) Any ROV or UTV manufactured or imported after [date that is 120 days after publication of a final rule] shall comply with the requirements stated in § 1421.3.

§ 1421.2 Definitions.

In addition to the definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2051), the following definitions apply for purposes of this part 1421.

(a) *Recreational off-highway vehicle (ROV)* means a motorized vehicle designed or intended for off-highway use with the following features: four or more wheels with tires designed for off-highway use, non-straddle-seating for one or more occupants, a steering wheel for steering controls, foot controls for throttle and braking, and a maximum vehicle speed greater than 30 miles per hour (mph).

(b) *Utility terrain or utility task vehicle (UTV)* means a motorized vehicle designed or intended for off-highway use with the following features: four or more wheels with tires designed for off-highway use, non-straddle seating for one or more

occupants, a steering wheel for steering controls, foot controls for throttle and braking, and a maximum vehicle speed typically between 25 and 30 mph.

§ 1421.3 Requirements.

Upon testing to the test procedure described in § 1421.4, the test ROV/UTV floorboard and/or floorboard guard shall not allow any breach of the test dowel into the occupant area, although deformations and/or deflections of the floorboard and/or floorboard guard are allowable. Examples of breach include cracks, holes, tears, seam gaps, or any other openings that allow any part of the test dowel to enter the occupant area.

§ 1421.4 Test procedures.

(a) *Load Condition.*

(1) *Weight.* The required load condition for a two-seat model is 430 lbs, representing a driver and a front seat passenger, each equivalent to a 95th percentile male (215 lbs). For four-seat models, the load condition shall be 860 lbs, representing the driver and three passengers. For six-seat models, the load condition shall be 1290 lbs, representing the driver and five passengers.

Note 1 to paragraph (a)(1). Typical gross vehicle weights of fully loaded test vehicles or simulated vehicle sleds exceed 2000 lbs.

(2) [Reserved].

(b) *Test Vehicle or Simulated Vehicle Sled Conditions.*

(1) The fully loaded test vehicle shall be fitted with the test floorboard and/or floorboard guard(s), as offered for sale.

(2) If a simulated vehicle sled will be used, where a ROV/UTV front metal frame is fitted with the test floorboard and/or floorboard guard(s), the simulated vehicle sled must be able to translate on a linear track that can propel the simulated vehicle sled to at least 10 mph.

(c) *Test Speed.*

(1) Test Vehicle or simulated vehicle sled speed, in miles per hour (mph) shall be measured at the moment of impact.

(2) The vehicle speed or simulated vehicle sled speed at the moment of impact shall be at least 10 mph.

(d) *Test Location.* The test dowel shall be positioned in such a way that the test dowel will strike the wheel-well area. The target of the test dowel cannot be any component other than the floorboard or floorboard guard surface. The target shall be at the point on the floorboard or floorboard guard most likely to produce the most adverse results, such as a seam, crease, catch point, or bend.

(e) *Test Equipment.* (1) A 2-inch diameter oak dowel positioned at angle between 12° to 25° from horizontal (indicated as X° in Figure 1) shall be installed on a dowel holder that can pivot about its transverse axis. The length of the dowel shall be between 39 inches to 65 inches.

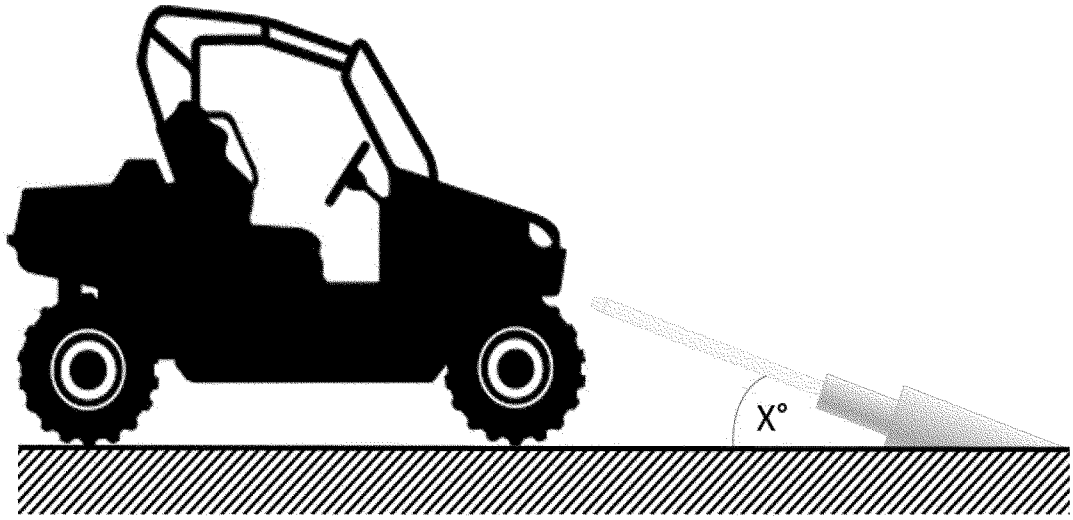

Figure 1 – Illustration of Debris Penetrator Test Dowel Orientation

(2) The tip of dowel shall be tapered, such that the tip surface diameter is 1 inch, and the tip cone length is 1 inch. See Figure 2.

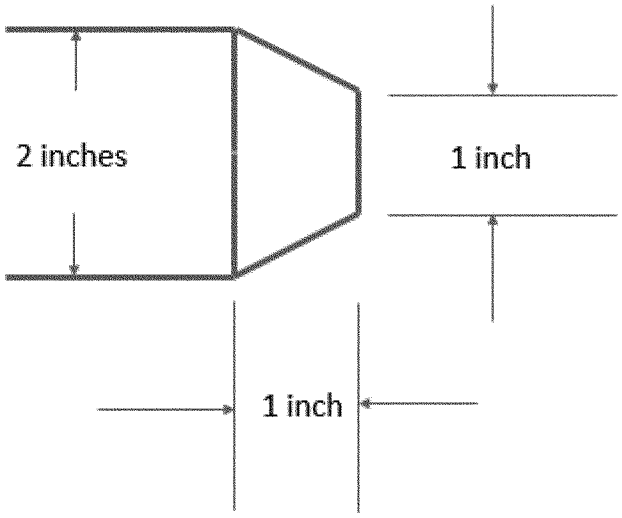

Figure 2 – Illustration of Debris Penetrator Test Dowel Tip Taper

(3) The dowel holder shall be constructed of a rigid material, such that the dowel holder does not fracture during the impact test.

Note to section (e)(3). To minimize damage to test equipment, a vehicle or simulated vehicle sled braking system and/or energy absorption foam blocks located 2 feet past the debris penetrator dowel holder is recommended.

(4) The braking system shall only activate after the vehicle or simulated vehicle sled collides completely with the debris penetrator dowel.

(f) *Test Conditions.* If a test vehicle is used, the test surface must be dry asphalt or dry concrete that is free of contaminants. Sufficient track length shall be available to allow the test vehicle or simulated vehicle sled to reach 10 mph. The test surface must be flat and have a grade slope of 1.7% (1°) or less. Ambient temperature shall be greater than 0°C (32 °F).

(g) *Test Procedure.* The debris penetrator test dowel shall be aligned with the target site of the floorboard or floorboard guard. A fully loaded, fully instrumented test vehicle or simulated vehicle sled shall be propelled in a straight-line path to collide with the debris penetrator test dowel, where the test vehicle or simulated vehicle sled speed shall be at least 10 mph at the moment of impact. For each vehicle model, a minimum of two test trials of one chosen test method shall be conducted.

Note 2 to paragraph (g): Rationale for Test Conditions. The required ambient temperature of 0°C (32 °F) or greater, maximum allowable flat course slope grade of 1.7% (1°) or less, flat dry asphalt or dry concrete conditions, and the 95th percentile male weight are consistent with the lateral stability requirements of ANSI/OPEI B71.9–2016 and ANSI/ROHVA–1–2016. They simulate real use and allow for repeatable test results.

§ 1421.5 Prohibited stockpiling.

(a) *Base period.* The base period for ROVs and UTVs is the calendar month with the median manufacturing or import volume within the last 13 months immediately preceding the month of promulgation of the final rule.

(b) *Prohibited acts.* Manufacturers and importers of ROVs and UTVs shall not manufacture or import ROVs or UTVs that do not comply with the requirements of this part between [date of promulgation of the rule] and [effective date of the rule] at a monthly rate that is greater than 105 percent of the monthly rate at which they manufactured or imported ROVs and UTVs during the base period.

§ 1421.6 Findings.

(a) *General.* To issue a consumer product safety standard under the Consumer Product Safety Act, the Commission must make certain findings and include them in the rule. 15 U.S.C. 2058(f)(3). These findings are presented in this section.

(b) *Degree and nature of the risk of injury.* (1) The risk of injury involves debris penetration through the floorboards of ROVs and UTVs. Debris, usually a fallen tree branch, can puncture through the floorboard and enter the occupant area of the vehicle, posing a risk of laceration or impalement to the driver and/or passengers, creating a risk of severe injury or death.

(2) Between 2009 and 2021, there were a total of 107 incidents found in CPSC databases involving debris penetration associated with ROVs and UTVs. There were six reported fatalities and 22 reported injuries related to the known debris penetration incidents. Additionally, there were approximately 630 manufacturer reports of debris cracking or breaking through floorboards and 10 injuries associated with three ROV debris penetration recalls.

(c) *Number of consumer products subject to the rule.* Except for the year 2009, the annual sales of ROVs and UTVs to the United States have increased steadily from an estimated 35,041 units in 1998 to 429,135 units in 2019. In 2019, there were an estimated 2.34 million ROVs and UTVs in use in the United States.

(d) *The need of the public for the product and the effects of the rule on the utility, cost and availability.* The effect of the rule will be limited to redesigning the floorboards of the vehicles, so it is unlikely to have an effect on the utility of ROVs and UTVs. The effect of the rule on cost and availability of ROVs and UTVs is expected to be minimal. In 2019, the average manufacturer's suggested retail prices (MSRP) of ROVs and UTVs ranged from about $4,599 to $53,700. When weighted by sales volume, the mean MSRP is $13,182 for ROVs and UTVs, which equates to $14,302 in 2021 dollars. The preliminary regulatory analysis estimates a per-unit cost to ROVs and UTVs of the rule to be $10.68

(undiscounted per unit costs of redesigning floorboard for ROVs and UTVs) to $18.71 (undiscounted per unit cost of floorboard guard fix for ROVs and UTVs.) Because this per-unit cost resulting from the rule is a very small percentage of the overall retail price of a ROV or UTV, the rule would have only a minimal effect on the cost or availability of ROVs or UTVs.

(e) *Other means to achieve the objective of the rule, while minimizing the impact on competition and manufacturing.* The rule achieves the objective of reducing debris penetration hazards associated with ROVs and UTVs while minimizing the effect on competition and manufacturing. Because the proposed rule implements a performance requirement, manufacturers may choose how best to comply with it. This facilitates innovation, competition, consumer choice, and the possibility of cost-effective options, and helps minimize adverse effects on competition, manufacturing, and commercial practices. In addition, as described in paragraph (d) of this section, the per-unit cost resulting from the rule is a very small percentage of the overall retail price of an ROV or UTV. With such a relatively low impact, it is unlikely that ROV or UTV companies would withdraw from the market or that the number of ROV or UTV models will be affected. The Commission preliminarily finds that the proposed rule minimizes impact on competition, marketing, and commercial practices.

(f) *Unreasonable risk.* (1) Debris penetration involves debris (usually a tree branch or stick) penetrating an ROV or UTV, usually the floorboard of the underside of an ROV or UTV. When such penetration occurs, the branch or debris can penetrate far enough into the vehicle to strike the occupant or passengers. The Commission is aware of 107 debris penetration incidents from its NEISS and CPSRMS databases. There were six fatalities, three of which involved debris penetration into the chest. There were 22 injuries caused by floorboard debris penetration, some of them severe.

(2) There were three Commission recalls of ROVs due to debris penetration hazards, which collectively involved approximately 55,000 vehicles. There were approximately 630 manufacturer-reported incidents involving debris cracking or breaking through the floorboards and 10 injuries associated with these recalls.

(3) ROVs have maximum speed capabilities greater than 30 mph, and UTVs typically have maximum speed capabilities between 25 and 30 mph. These vehicles are intended to be driven off-road, including wooded areas or trails, where tree branches and sticks are commonplace. CPSC incident data shows that debris penetration is occurring at speeds less than 10 mph. CPSC testing shows that debris penetration can occur at speeds as low as 2.5 mph on standard OEM ROV and UTV floorboards. In addition, these incidents often occur rapidly and without notice, so that there is little time for the user to react.

Voluntary standards for ROVs and UTVs do not contain requirements intended to address floorboard debris penetration in the vehicles.

(4) Given the potentially severe and unexpected nature of this hazard when using the vehicle as intended, the Commission finds that this rule is reasonably necessary to eliminate or reduce an unreasonable risk of injury.

(g) *Public interest.* The proposed rule is intended to address an unreasonable risk of injury from debris penetration into ROVs and UTVs. Adherence to the requirements of the proposed rule would reduce deaths and injuries from ROV and UTV debris penetration incidents in the future; thus, the rule is in the public interest.

(h) *Voluntary standards.* There are two voluntary standards for ROVs and UTVs: ANSI/ROHVA 1–2016, American National Standard for Recreational Off-Highway Vehicles, and ANSI/OPEI B71.9–2016, American National Standard for Multipurpose Off-Highway Utility Vehicles. Neither standard has requirements to address debris penetration. For this reason, the Commission concludes that the voluntary standards will not adequately address the unreasonable risk of injury associated with debris penetration in ROVs and UTVs.

(i) *Relationship of benefits to costs.* This rule is intended to reduce the impalement and laceration risks of a tree branch penetrating the ROV/UTV floor, and therefore, provide projected benefits of $15.47 million per year by reducing the societal costs of debris penetration injuries and deaths. The costs associated with the proposed requirements to prevent debris penetration are expected to be between $9.26 and $15.53 million per year. The Commission finds that the benefits expected from the rule bear a reasonable relationship to its costs.

(j) *Least burdensome requirement that would adequately reduce the risk of injury.* The Commission considered several alternatives to the proposed rule. However, the Commission finds that these alternatives would not adequately address the unreasonable risk of injury associated with debris penetration in ROVs and UTVs.

(1) *Conduct Marketing Campaigns Instead of Promulgating a Final Rule.* The Commission considered conducting marketing campaigns and recalls instead of promulgating a rule to address the debris penetration hazard associated with ROVs and UTVs. However, even though an information and marketing campaign may make ROV and UTV users more aware of the debris penetration hazard, a simple modification of consumer behavior would be unlikely to address the risk of injury. Encountering debris in an off-highway environment, where these vehicles are intended to be driven, is largely unavoidable, and debris penetration is possible at speeds as low as 2 mph.

(2) *Recalls.* The Commission considered recalls to address the risk of debris penetration associated with ROVs and UTVs. Recalls, however, only apply to an individual manufacturer and product, do not extend to similar products, and occur only after consumers have purchased and used such products and have been exposed to and potentially injured or killed by the hazard. Additionally, recalls can only address products that are already on the market and cannot prevent unsafe products from entering the market. With either a marketing campaign or use of recalls, much of the estimated $18.02 million annualized societal costs would continue to be incurred by consumers in the form of deaths and injuries. Therefore, the Commission concludes that marketing campaigns and recalls, without a mandatory rule, are unlikely to reduce the risk of injury associated with debris penetration.

(3) *Rely on Voluntary Standards Development.* The Commission considered directing staff to work with voluntary standards development organizations to address the hazard. However, staff has been discussing debris penetration hazards with ROHVA and OPEI since 2018, and there has been inadequate progress on standard development to address the risk. Although staff will continue to work with ROHVA and OPEI on the voluntary standards, it is not clear if or when a standard will be developed to adequately address the risk of injury. Until a voluntary standard is developed, the number and societal costs of injuries and fatalities associated with debris penetration are likely to remain at or near current levels. Therefore, the Commission concludes that rulemaking is necessary.

(4) *Limit ROV and UTV Speeds to Maximum of 10 Miles per Hour.* The

Commission considered limiting the maximum speed of ROVs and UTVs to 10 miles per hour. Although costs to manufacturers would be expected to be less under this approach, the quantifiable net benefits would be less as well. In addition, setting the maximum speed at 10 mph could have an adverse impact on the utility of the vehicles and on consumer acceptance of the requirement. Therefore, the Commission is not adopting this approach.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–15355 Filed 7–20–22; 8:45 am]

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