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Presidential Documents

Title 3—

The President

Proclamation 10425 of July 22, 2022

Made in America Week, 2022

By the President of the United States of America

A Proclamation

During Made in America Week, we celebrate American workers, the products they make, the services they provide, and the incredible impact they have on our Nation's economy. Across the world, ''Made in America'' is a badge of quality, and this week we honor the proud legacy and promising future of American goods, services, jobs, and innovation—the collective engine of American prosperity.

The COVID–19 pandemic and the economic crisis it caused, as well as Vladimir Putin's unjustified and unprovoked war on Ukraine, have underscored the importance of a strong and secure domestic industrial base. We have seen in recent years that when goods made overseas become unavailable or exorbitantly costly, American families feel the pain. For years, ''Buy American'' was a hollow slogan—too many goods and services paid for by American taxpayers were outsourced abroad at the expense of American jobs. In my Administration, ''Buy American'' is an ironclad promise—and we have taken bold action to make it real.

During my first year in office, we created more manufacturing jobs on average per month than any other President has in the last 50 years. Businesses are investing in American manufacturing and creating thousands of good-paying union jobs to meet the demands of our modern economy and rebuild that economy around working people. We are creating more opportunity for workers and businesses who have too often been overlooked by investing in racial, gender, and geographic diversity for industries across the country.

The Federal Government is the largest buyer of consumer goods in the world. To ensure that we are investing in American products, I recently announced a procurement rule that strengthens Buy American provisions by increasing the Made in America content threshold from 55 percent to 75 percent so that goods have to be truly made in America to be considered ''Made in America.'' This represents the biggest change to the Buy American Act in almost 70 years. I also named our Nation's first-ever Made in America Director to serve in a high-level White House role. I continue to call on the Congress to pass the Bipartisan Innovation Act so that we can create more resilient domestic supply chains and unleash the next generation of American innovation for the industries and jobs of the future.

The historic Bipartisan Infrastructure Law is critical to advancing our Made in America agenda. We are rebuilding our Nation's roads, bridges, ports, airports, and so much more. We are constructing a national network of 500,000 electric vehicle chargers installed by union workers on highways and in communities across America. We are ensuring that every American has clean drinking water. We are creating good-paying union jobs, revitalizing American manufacturing, and positioning the United States to continue to lead throughout the 21st century.

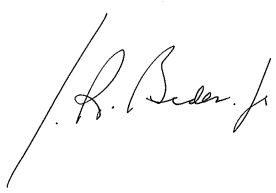
In addition, we are leveraging a federally funded national network—the Manufacturing Extension Partnership—to help Government agencies connect with new suppliers across the country, including Black, Brown, and Native American-owned small businesses, which have often been excluded from

these opportunities. My Administration also launched MadeInAmerica.gov to help American businesses in every community identify available government contracts, and we created a Made in America Council to help ensure that our future is made in all of America by all of America's workers.

A vibrant domestic industrial base is key to building an economy that works for working people and advancing America's global leadership with American manufacturers and workers at the forefront. During Made in America Week, let us celebrate everything that is Made in America and the workers, businesses, and innovators who are the driving force behind their success. America is the most innovative country in the world, and together, we will build a competitive economy for the future right here at home.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim July 24 through July 30, 2022, as Made in America Week. I call upon all Americans to observe this week by supporting American workers and domestic businesses that are the backbone of building a future here in America and celebrating Made in America.

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



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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700, 701, 702, 708a, 708b, 750, and 790

RIN 3133–AF41

Asset Threshold for Determining the Appropriate Supervisory Office

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending its regulations to revise the $10 billion asset threshold used for assigning supervision of consumer federally insured credit unions (FICUs) to the Office of National Examinations and Supervision (ONES). The rule only applies to FICUs whose assets are $10 billion or more (covered credit unions). The rule provides that covered credit unions with less than $15 billion in total assets (tier I credit unions) will be supervised by the appropriate NCUA Regional Office. Covered credit unions with $15 billion or more in total assets (tier II and tier III credit unions) continue to be supervised by ONES. The rule does not alter any regulatory requirements for covered credit unions.

DATES: The final rule is effective January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Dale Klein, Senior Financial Analyst, and Christopher DiBenedetto, Financial Analysts, Office of National Examinations and Supervision; or Rachel Ackmann, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314–3428. Dale Klein can also be reached at (703) 518–6629, Christopher DiBenedetto can be reached at (703) 518–6628, and Rachel Ackmann can be reached at (703) 548–2601.

SUPPLEMENTARY INFORMATION:

I. Background

Part 702 Capital Planning and Stress Testing Requirements

Part 702, subpart C, of the NCUA's regulations (part 702) implements the NCUA's capital planning and stress testing requirements for consumer FICUs.[1] As discussed previously, a consumer FICU is defined as a covered credit union if it has $10 billion or more in total assets.[2] Covered credit unions are then further divided into the following three asset tiers:

- A tier I credit union is a covered credit union that has less than $15 billion in total assets;
- A tier II credit union is a covered credit union that has $15 billion or more in total assets, but less than $20 billion in total assets, or is otherwise designated as a tier II credit union by the NCUA; and
- A tier III credit union is a covered credit union that has $20 billion or more in total assets, or is otherwise designated as a tier III credit union by the NCUA.

Incremental levels of regulatory requirements are based on the three tiers. For example, only tier II and tier III credit unions are subject to stress testing requirements.

Agency Structure

In 2012, the NCUA established the Office of National Examinations and Supervision (ONES), and reorganized its central and field office structure. As part of its internal restructuring, the NCUA transferred the responsibility for supervising covered credit unions to ONES from the Regional Offices.[3] Initially, covered credit unions were transferred to ONES on January 1, 2014. Annually thereafter, FICUs newly reporting assets of $10 billion or more on March 31 of a given calendar year are reassigned to ONES on the first day of the following calendar year.

COVID–19 Pandemic

Many FICUs have experienced significant balance sheet growth as a result of the COVID–19 pandemic and the corresponding policy response.[4] For example, FICUs nearing the $10 billion asset threshold incurred balance sheet growth of about 14 percent on average during the COVID–19 pandemic, and in one case more than 34 percent. In contrast, similarly sized FICUs had an average asset growth rate of only nine percent in 2019.

In March 2021, the Board temporarily modified its rules for FICUs meeting certain asset thresholds through an interim final rule (Asset Threshold IFR).[5] The Asset Threshold IFR permitted FICUs to continue to use financial data as of March 31, 2020, to determine the applicability of certain regulations for calendar years 2021 and 2022, instead of assets reported as of March 31, 2021. The Asset Threshold IFR also made a conforming amendment to the measurement date for determining ONES supervision. Under the Asset Threshold IFR, the NCUA used financial data as of March 31, 2020, instead of March 31, 2021, to determine the appropriate supervisory office of FICUs for calendar year 2022. As a result, no FICU was transitioned to ONES supervision for calendar year 2022, even if the FICU had $10 billion or more in total assets as of March 31, 2021.

The next effective measurement period to determine whether a FICU is subject to capital planning and stress testing requirements and ONES supervision was March 31, 2022. Eight new FICUs met or exceeded the $10 billion threshold as of March 31, 2022, and will become subject to ONES supervision beginning January 1, 2023, unless the threshold is changed.

II. The Proposed Rule

On February 17, 2022, the Board published a proposed rule that reconsidered its policy of assigning all covered credit unions to ONES supervision.[6] The Board received five comments on the proposed rule. Comments were received from a credit union, a credit union league, two trade associations, and an association of state

[1] 12 CFR 702.301. The term *consumer* FICU is being used instead of the term *natural person* FICU. This terminology is being used for clarity; however, the term *natural person* FICU will continue to be used for the accompanying regulatory text changes for consistency with other sections of the NCUA's regulations.

[2] 12 CFR 702.302.

[3] In general, Regional Office means the office of NCUA located in the designated geographical areas in which the office of the FICU is located.

[4] *See generally,* 86 FR 15397 (Mar. 23, 2021).

[5] *Id.*

[6] 87 FR 11996 (Mar. 3, 2022).

credit union supervisors. All of the commenters were generally supportive of increasing the threshold used for determining whether a covered credit union will be subject to ONES supervision, and some commenters reiterated the rationale for the change discussed in the proposed rule. All commenters, however, raised additional considerations for the Board, and some commenters recommended specific changes to the proposed rule. The comments are discussed in detail in the next section.

III. The Final Rule

The Board has reconsidered its policy of assigning all covered credit unions to ONES supervision and is adopting the proposed rule as final. Under the final rule, tier II and tier III credit unions remain subject to ONES supervision. The Board, however, will not assign tier I credit unions to ONES supervision.[7] Tier I credit unions will remain subject to Regional Office supervision until they become tier II credit unions.

As discussed in the proposed rule, the Board has reconsidered its position that all covered credit unions should transition to ONES for two reasons. First, the agency can more effectively manage its resources by continuing to supervise most tier I credit unions through the Regional Offices. Second, the Board has reconsidered the level of risk to the National Credit Union Share Insurance Fund (NCUSIF) posed by tier I credit unions. To implement the change, the rule creates a new definition of ''ONES credit union'' to distinguish between covered credit unions subject to ONES supervision and covered credit unions subject to Regional Office supervision.[8] The term ONES credit union is defined as all tier II and tier III credit unions.

One commenter recommended increasing the threshold for ONES supervision from $15 billion, as proposed, to $20 billion to better reflect growth of insured shares. The commenter stated that a $20 billion threshold would better align the scope of ONES supervision with the risk of the industry's largest credit unions. As support, the commenter stated that both the insured share base and the NCUSIF have increased by 95 percent since 2013, so a $10 billion FICU in 2013 would pose the same risk to the NCUSIF as a $20 billion FICU would today. This commenter further requested that if the Board does not increase the threshold for ONES supervision from the proposed $15 billion, the NCUA should include a more complete description of the agency's risk assumptions, including a description of whether the historical loss rate has changed significantly over time, in the final rule. The commenter stated the current thresholds are conservative and requested additional support for the thresholds.

The Board has not made changes to the final rule in response to this comment. The Board does not believe that tier II credit unions, which conduct credit union-run supervisory stress tests, should be supervised by the Regional Offices, regardless of the growth of insured assets or the NCUSIF. The Board continues to believe that ONES is the more appropriate office to supervise credit unions that are subject to credit union-run stress testing requirements due to the resources and specialization required to oversee supervisory stress tests.

In addition to increasing the threshold for ONES supervision, two commenters requested that the Board raise the asset-based thresholds in part 702 related to the substantive requirements. One commenter suggested increasing the range for all three asset tiers by $5 billion. Another commenter noted that credit unions are subject to stress testing at a smaller size than banks and stated that if the tier I threshold is increased to $20 billion, then the other thresholds should increase as well.

The Board has not made any changes to the final rule in response to these comments. First, as discussed in a previous rulemaking, the Board does not consider the risks that banks pose to the Deposit Insurance Fund as analogous to the risks that covered credit unions pose to the NCUSIF, and therefore, does not believe that at this time the size thresholds for banks are an appropriate analogy for size thresholds for covered credit unions.[9] Second, the Board believes that size is one of the primary indicators of systemic risk to the NCUSIF. Given the change in relative risk of tier I credit unions to the NCUSIF and the NCUA's advancement of large credit union supervisory tools, the Board does not believe that Regional Office supervision of tier I credit unions results in undue risk to the NCUSIF. However, the Board believes the absolute risk of a tier I credit union remains a material exposure to the NCUSIF and increasing the tier I asset threshold for the regulatory requirements would unduly increase the NCUSIF's contributed capital at risk. For example, the NCUSIF's capital at risk to a tier I credit union is estimated at roughly 20 percent of the NCUSIF's contributed capital. Therefore, the Board continues to believe that covered credit unions with $10 billion or more in total assets represent sufficient risk to the NCUSIF such that capital planning and stress testing requirements are warranted.

Under the proposed rule, tier I credit unions that were supervised by ONES were grandfathered and remained subject to ONES supervision. Two commenters expressly agreed with grandfathering tier I credit unions currently subject to ONES supervision. In response to a specific question in the preamble, one of these commenters requested a technical change to the final rule to clarify that tier I credit unions that are not grandfathered are excluded from the definition of ''ONES credit union.'' Another commenter did not support grandfathering all tier I credit unions and, instead, recommended that tier I credit unions currently supervised by ONES have the option of either remaining under ONES supervision or being transferred to the appropriate Regional Offices.

The Board is finalizing the rule without the grandfather clause for tier I credit unions already supervised by ONES, as this provision has become unnecessary. All credit unions currently supervised by ONES have reported assets of $15 billion or more as of March 31, 2022. Accordingly, all credit unions assigned to ONES will be categorized as tier II or tier III effective January 1, 2023, and remain with ONES under this final rule.[10]

Under the final rule, all covered credit unions remain subject to enhanced capital planning and stress testing data collections.[11] One commenter provided comments about subjecting all covered

[7] As discussed in the *Reservation of Authority* section, the Board has the option of using its existing reservation of authority in part 702 to designate a FICU as subject to ONES or Regional Office supervision, or a tier I, II, or III credit union.

[8] In the proposed rule, the definition of ''ONES credit union'' was added to part 702. One commenter recommended a technical change to include the proposed definition of ''ONES credit union'' in § 700.2 instead of part 702. The Board agrees with this recommendation and has moved the defined term ''ONES credit union'' to part 700 instead of part 702. This change does not alter the substance of the provision.

[9] 83 FR 17901 (Apr. 25, 2018).

[10] The effective date of the final rule is January 1, 2023. This date aligns with part 702 as a credit union that crosses the asset threshold as of March 31 of a given calendar year is not subject to the applicable requirements of part 702 until the following calendar year. Here, credit unions that crossed any asset tier threshold on March 31, 2022, would not be subject to any newly applicable requirements of part 702 until January 1, 2023.

[11] 12 CFR 702.306(d). The Board notes that the final rule includes a clarifying edit related to 12 CFR 702.306(d) to clarify that the data collection applies to all covered credit unions, which reflects current NCUA practice. *See also,* 12 U.S.C. 1756 and 1784; and 12 CFR 741.1.

credit unions to the enhanced data collection. First, the commenter recommended limiting the number of specialized data collections applicable to tier I credit unions. The commenter expressed concerns about the usefulness of the data if the Regional Offices would not be using it to perform specialized examinations. The commenter also was concerned about the Regional Offices' ability to manage and contextualize the data collected. Second, the commenter requested that the NCUA clarify that ONES will be managing the data collection process for all tier I credit unions and that ONES will be the point of contact for resolving any data collection issues. The commenter was concerned with ONES acting as the aggregator of all data collections due to the resource limitations discussed in the proposed rule.

Data collection is part of the NCUA's strategic initiative to enhance supervision and is used to inform qualitative and quantitative assessments of covered credit unions. The Board does not believe the data collection presents an undue burden to covered credit unions as the data is the type of information the Board expects covered credit unions to be analyzing and considering on their own regardless of whether the NCUA collects the information. In regard to the commenter's concern on the continued use of the data, ONES will share the analysis and reporting with Regional Offices, and the data will continue to be used by the agency to assess a covered credit union's capital adequacy through review of its capital plan. Additionally, the ongoing coordination between ONES and Regional Offices has included discussions on the analysis and use of collected data to inform the supervisory process. The Board also notes that the collected data can drive supervisory efficiencies for covered credit unions that may reduce regulatory burden, as the data provides insight for offsite supervision and enables timely risk identification and mitigation. For example, the data may lead to more targeted supervisory work resulting in less time on-site at covered credit unions.

Finally, the Board confirms that ONES will be managing the data collection process for all tier I credit unions and that ONES will be the point of contact for resolving any data collection issues, in collaboration with the assigned Regional Office. The Board believes that ONES has sufficient resources to manage the data collection process for all covered credit unions, including those that will be supervised by the Regional Offices. Therefore, the final rule has not amended the current data collection requirements.

A few commenters also raised general concerns about coordination between regional and ONES examiners and training regional examiners to oversee tier I credit unions' capital plans. One commenter encouraged ONES to periodically assess the consistency of capital planning supervision conducted by Regional Offices to ensure capital planning practices are aligned with ONES' expectations. The commenter was concerned about the potential for covered credit unions to be confronted with different standards when they advance to ONES supervision. Another commenter expressed concern about risk to the NCUSIF and urged the Board to closely monitor for any unintended consequences of the change and ensure there is sufficient specialized expertise at the Regional Office level to properly supervise tier I credit unions. The commenter urged the agency to ensure close collaboration between ONES and the Regional Offices on an indefinite basis.

The Board agrees with commenters on the need for close collaboration between ONES and Regional Offices to ensure continuity and sound supervision for covered credit unions. As discussed previously, the Board intends for the coordination between ONES and Regional Offices to be ongoing. The Board notes that ONES is providing a capital plan training program to Regional Offices to ensure consistency of review across the NCUA. And while the Regional Offices are equipped to provide sound supervision of tier 1 credit unions, the Board will explore ongoing enhancements to the supervisory capabilities and approaches for large credit unions assigned to the Regional Offices.

The Board also notes that the scope of Regional Office examinations will remain consistent with the scope of ONES' examinations as both offices are subject to the same national examination standards. As such, the Board does not expect the review of capital plans or the general supervision of tier I credit unions to be materially different under the Regional Offices. The NCUA has also implemented various supervisory tools that enhance offsite monitoring of covered credit union risk. Under the final rule, these tools remain in use for the supervision of tier I credit unions regardless of their supervisory office, including enhanced data collection. Additionally, as discussed in the proposed rule, there are no changes to the enhanced regulatory requirements for covered credit unions. Therefore, the Board does not believe that Regional Office supervision of tier I credit unions results in undue risk to the NCUSIF.

Two commenters raised the issue of coordination with the Consumer Financial Protection Bureau (CFPB). Specifically, these commenters urged the Board to ensure that coordination exists between the Regional Offices and the CFPB to prevent instances of examination overlap or confusion resulting from the application of differing standards and expectations. The Board understands the importance of both ongoing interagency and intra-agency coordination and will ensure there is coordination between the appropriate NCUA supervisory office and the CFPB.

Another commenter recommended that the Board consider a longer-term strategy for managing the scope of ONES supervision. The commenter stated that as long as industry assets continue to grow, it is only a matter of time before the number of ONES-supervised credit unions increases. The commenter stated that adopting a larger tier I asset threshold is one way for the agency to make the most of existing resources while undertaking a more comprehensive analysis of how best to allocate supervisory resources as industry assets continue to grow. The Board agrees with the commenter that longer-term strategic planning is an important part of its resource allocation. The Board notes that the annual budget process has been one tool used to evaluate its long-term resource needs.

Reservation of Authority

The Board may use existing reservations of authority in part 702 to designate a FICU as subject to ONES or Regional Office supervision, or a tier I, II, or III credit union. For example, the Board could use its reservation of authority to subject a tier I credit union that would otherwise be supervised by a Regional Office to ONES supervision. Or, in contrast, the Board may exercise its reservation of authority to have a tier II credit union remain subject to Regional Office supervision. Independent of its use of the reservation of authority to designate an appropriate supervisory office, the Board may also use its reservation of authority to designate a credit union as a tier I, II, or III credit union.

In response to a specific solicitation of comments on this issue, four commenters discussed the Board's potential use of its reservation of authority. Two commenters had concerns that the use of this authority may lack appropriate guardrails and suggested the Board adopt specific

guidelines on when this authority could be used. The Board is declining to adopt specific written guidelines at this time. The Board has not proposed changes to its current reservation of authority and believes that the existing rule provides sufficient information on factors the Board would consider before using its authority. The proposed rule stated that when making any such determination, the Board will consider all relevant factors affecting the covered credit union's safety and soundness, such as its activities, business model, risk-management practices, and the types of assets held. The proposed rule also stated that any exercise of authority under this section by the NCUA will be in writing and consider the financial condition, size, complexity, risk profile, scope of operations, and level of net worth of the covered credit union, in addition to any other relevant factors. The Board believes any additional guidelines on use of the reservation of authority would unnecessarily reduce the Board's flexibility to address the riskiness of a credit union. The Board notes, however, that this authority has never been used and that the Board expects use of such authority would continue to be limited.

These commenters also asked the Board to clarify the appeal rights of a covered credit union in any situation when the reservation of authority is invoked. The Board has declined adopting an appeal process because the Board has not delegated this authority and would itself exercise the reservation of authority. Another commenter generally stated that it is important that the NCUA have a clearly demonstrated rationale for using the reservation of authority, but acknowledged that instances may arise that require the NCUA to employ greater oversight over a credit union. When deciding to use its authority, the Board would consider all relevant factors affecting the complex credit union's safety and soundness and would state its rationale to the credit union. The Board expects to provide a credit union subject to proposed use of the reservation of authority with an opportunity to present evidence on why the agency should not proceed with use of the authority.

Finally, one commenter stated that the reservation of authority should include an express requirement that the NCUA would consult and cooperate with state regulators before transferring a tier I state-chartered FICU (FISCU) to ONES. The Board does not believe an express requirement is necessary; however, it expects consultation with state regulators would occur prior to exercising its authority under the final rule.

Comments Outside the Scope of the Proposed Rule

One commenter recommended that the Board harmonize when a credit union is designated as a covered credit union with the CFPB's calculation of its $10 billion asset threshold. Specifically, the NCUA should calculate total assets as the average of the covered credit union's total assets as reported on its Call Reports for the preceding four quarters.

One commenter recommended considering making a change to the asset-size threshold for FISCUs' examination cycles. According to this commenter, under a 2016 NCUA policy, NCUA examines every FISCU with assets of $1 billion or greater every 8–12 months. The commenter recommended raising the threshold to $3 billion or greater.

These comments were outside the scope of the proposed rule. However, the Board will take them into consideration for future rulemakings or policy updates.

IV. Legal Authority

The Board is issuing this final rule pursuant to its authority under the Federal Credit Union Act (FCU Act).[12] Under the FCU Act, the NCUA is the chartering and supervisory authority for Federal credit unions (FCUs) and the Federal supervisory authority for FICUs. The FCU Act grants the NCUA a broad mandate to issue regulations governing both FCUs and FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe regulations for the administration of the FCU Act.[13] Section 209 of the FCU Act is a plenary grant of regulatory authority to the NCUA to issue regulations necessary or appropriate to carry out its role as share insurer for all FICUs.[14] Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure that the credit union industry and the NCUSIF remain safe and sound.

V. Regulatory Procedures

Effective Date

The effective date of the final rule is January 1, 2023. This date aligns with part 702 as a credit union that crosses the asset threshold as of March 31 of a given calendar year is not subject to the applicable requirements of part 702 until the following calendar year. Here, credit unions that crossed any asset tier threshold on March 31, 2022, would not be subject to any newly applicable requirements of part 702 until January 1, 2023.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden (44 U.S.C. 3507(d)). For purposes of the PRA, a paperwork burden may take the form of a reporting, recordkeeping, or a third-party disclosure requirement, referred to as an information collection. The final rule does not affect any existing or impose any new information collection requirements.

The information collection requirement that tier I credit unions retain a record of their annual capital plan will remain in effect regardless of a covered credit union's supervisory office and is approved under Office of Management and Budget (OMB) control number 3133–0199, Capital Planning and Stress Testing.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule or a final rule pursuant to the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. For purposes of the RFA, the Board considers credit unions with assets less than $100 million to be small entities.[15] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule. The final rule affects the supervisory office assigned to oversee FICUs with $10 billion or more in total assets. Therefore, the Board certifies that it does not have a significant economic impact on a substantial number of small credit unions.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to

[12] 12 U.S.C. 1751 *et seq.*

[13] 12 U.S.C. 1766(a).

[14] 12 U.S.C. 1789.

[15] NCUA Interpretive Ruling and Policy Statement 15–1, 80 FR 57512 (Sept. 24, 2015).

consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles.

This final rule does not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has therefore determined that this rule does not constitute a policy that has federalism implications for purposes of the Executive order.

Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule does not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999.[16]

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) generally provides for congressional review of agency rules.[17] A reporting requirement is triggered in instances where the NCUA issues a final rule as defined in the Administrative Procedure Act.[18] Besides being subject to congressional oversight, an agency rule may also be subject to a delayed effective date if it is a ''major rule.'' The NCUA believes that this final rule is not a ''major rule.'' As required by SBREFA, the NCUA will submit this final rule to the Office of Management and Budget for it to determine if it is a ''major rule'' for purposes of SBREFA. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

List of Subjects

12 CFR Part 700

Credit unions.

12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 708a

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 708b

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 750

Credit unions, Golden parachute payments, Indemnity payments.

12 CFR Part 790

Organization and functions (Government agencies).

By the NCUA Board on July 21, 2022.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons discussed in the preamble, the Board amends 12 CFR parts 700, 701, 702, 708a, 708b, 750, and 790 as follows:

PART 700—DEFINITIONS

■ 1. The authority citation for part 700 continues to read as follows:

Authority: 12 U.S.C. 1752, 1757(6), 1766.

■ 2. In § 700.2, add a definition of ''ONES credit union'' in alphabetical order and revise the definitions of ''Regional Director'' and ''Regional Office'' to read as follows:

§ 700.2 Definitions.

* * * * *

ONES credit union means a credit union subject to supervision by the Office of National Examinations and Supervision (ONES) and includes tier II and tier III credit unions, as defined under part 702 of this chapter. Tier I credit unions are subject to supervision by the appropriate Regional Office.

* * * * *

Regional Director means the representative of NCUA in the designated geographical area in which the office of the federally insured credit union is located or, for ONES credit unions, the Director of the Office of National Examinations and Supervision.

Regional Office means the office of NCUA located in the designated geographical areas in which the office of the federally insured credit union is located or, for ONES credit unions, the Office of National Examinations and Supervision.

* * * * *

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 3. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 4. In § 701.14, revise paragraph (c)(3)(i) to read as follows:

§ 701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.

* * * * *

(c) * * *

(3) * * *

(i) *Where to file.* Notices will be filed with the appropriate Regional Director or, in the case of a corporate credit union or a ONES credit union under part 700 of this chapter, with the Director of the Office of National Examinations and Supervision. All references to Regional Director will, for corporate credit unions and ONES credit unions under part 700 of this chapter, mean the Director of Office of National Examinations and Supervision. State-chartered federally insured credit unions will also file a copy of the notice with their state supervisor.

* * * * *

PART 702—CAPITAL ADEQUACY

■ 5. The authority citation for part 702 is revised to read as follows:

Authority: 12 U.S.C. 1766(a), 1784(a), 1786(e), 1790d.

■ 6. In § 702.306, revise paragraph (d) to read as follows:

§ 702.306 Annual supervisory stress testing.

* * * * *

(d) *Information collection.* Upon request, the covered credit union must provide NCUA with any relevant qualitative or quantitative information requested by NCUA pertinent to the capital plans or stress tests under this part.

* * * * *

PART 708a—BANK CONVERSIONS AND MERGERS

■ 7. The authority citation for part 708a continues to read as follows:

Authority: 12 U.S.C. 1766, 1785(b), and 1785(c).

■ 8. In § 708a.101, revise the second sentence of the definition of ''Regional Director'' to read as follows:

§ 708a.101 Definitions.

* * * * *

[16] Public Law 105–277, 112 Stat. 2681 (1998).

[17] 5 U.S.C. 551.

[18] *Id.*

Regional Director * * * For corporate credit unions and natural person credit unions defined as ONES credit unions under part 700 of this chapter, Regional Director means the Director of NCUA's Office of National Examinations and Supervision.

* * * * *

■ 9. In § 708a.301, revise the second sentence of the definition of ''Regional Director'' to read as follows:

§ 708a.301 Definitions.

* * * * *

Regional Director * * * For corporate credit unions and natural person credit unions defined as ONES credit unions under part 700 of this chapter, Regional Director means the Director of NCUA's Office of National Examinations and Supervision.

* * * * *

PART 708b—MERGERS OF INSURED CREDIT UNIONS INTO OTHER CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

■ 10. The authority citation for part 708b continues to read as follows:

Authority: 12 U.S.C. 1752(7), 1766, 1785, 1786, 1789.

■ 11. In § 708b.2, revise the second sentence of the definition of ''Regional Director'' to read as follows:

§ 708b.2 Definitions.

* * * * *

Regional Director * * * For corporate credit unions and natural person credit unions defined as ONES credit unions under part 700 of this chapter, Regional Director means the Director of NCUA's Office of National Examinations and Supervision.

* * * * *

PART 750—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

■ 12. The authority citation for part 750 continues to read as follows:

Authority: 12 U.S.C. 1786(t).

■ 13. In § 750.6, revise the third sentence of paragraph (a) to read as follows:

§ 750.6 Filing instructions; appeal.

(a) * * * In the case of a Federal or state-chartered corporate credit union or a ONES credit union under part 700 of this chapter, such written requests must be submitted to the Director of the Office of National Examinations and Supervision. * * *

* * * * *

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

■ 14. The authority citation for part 790 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789, 1795f.

■ 15. In § 790.2, revise the first sentence of paragraph (c)(2) to read as follows:

§ 790.2 Central and field office organization.

* * * * *

(c) * * *

(2) * * * Similar to a Regional Director, the Director of the Office of National Examinations and Supervision manages NCUA's supervisory program over credit unions; however, it oversees the activities for corporate credit unions and of natural person credit unions defined as ONES credit unions under part 700 of this chapter, in accordance with established policies. * * *

[FR Doc. 2022–16009 Filed 7–26–22; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0388; Project Identifier MCAI–2020–01604–T; Amendment 39–22088; AD 2022–13–02]

RIN 2120–AA64

Airworthiness Directives; MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain 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 AD was prompted by reports of the failure of certain primary ejector fuel feed flexible hoses, which may have a thinner liner than specified by design requirements, and are therefore more susceptible to cracking. This AD requires replacing the hoses. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 31, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 31, 2022.

ADDRESSES: For Bombardier service information identified in this final rule, 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. It is also available on the internet at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0388.

Examining the AD Docket

You may examine the AD docket on the internet at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0388; 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: Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2020–03, dated March 5, 2020 (TCCA AD CF–2020–03) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain 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–2022–0388.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain 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. The NPRM published in the **Federal Register** on April 1, 2022 (87 FR 19032). The NPRM was prompted by reports of the failure of certain primary ejector fuel feed flexible hoses, which may have a thinner liner than specified by design requirements, and are therefore more susceptible to cracking. The NPRM proposed to require replacing the hoses. The FAA is issuing this AD to address a possible fuel hose leak, which could cause a lateral imbalance with an adverse effect on the airplane's controllability, or result in a dual inflight engine shutdown (IFSD). See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

The FAA reviewed the relevant data, considered the comment received, 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

Bombardier has issued Service Bulletin 670BA–28–040, dated September 30, 2019. This service information describes procedures for, among other actions, replacing any primary ejector fuel feed flexible hose, (P/N) CC670–62022–3 and CC670–62022–4, having serial numbers 001 through 2470 inclusive. 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 457 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
12 work-hours × $85 per hour = $1,020	$2,872	$3,892	$1,778,644

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:

2022–13–02 MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–22088; Docket No. FAA–2022–0388; Project Identifier MCAI–2020–01604–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 31, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) airplanes identified in paragraphs (c)(1) through (3) of this AD, certificated in any category.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) and CL–600–2C11 (Regional Jet Series 550) airplanes, serial numbers 10002 through 10325 inclusive.

(2) Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15263 inclusive.

(3) Model CL–600–2E25 (Regional Jet Series 1000), serial numbers 19001 through 19013 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel system.

(e) Unsafe Condition

This AD was prompted by reports of the failure of certain primary ejector fuel feed flexible hoses, which may have a thinner

liner than specified by design requirements, and are therefore more susceptible to cracking. The FAA is issuing this AD to address a possible fuel hose leak, which could cause a lateral imbalance with an adverse effect on the airplane's controllability, or result in a dual inflight engine shutdown (IFSD).

(f) Compliance

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

(g) Required Actions

At the applicable time specified in figure 1 to paragraph (g) of this AD: Replace each hose having part number (P/N) CC670–62022–3 and P/N CC670–62022–4 and serial number 001 through 2470 inclusive, in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–28–040, dated September 30, 2019.

BILLING CODE 4910–13–P

Figure 1 to paragraph (g) – *Compliance Schedule*

Airplane Model	Compliance Time
CL-600-2C10 and CL-600-2C11 airplanes, serial numbers 10005 through 10065 inclusive, that have accumulated less than 31,200 flight hours since Bombardier Service Bulletin (SB) 670BA-28-008 was incorporated	Prior to the accumulation of 40,000 flight hours since SB 670BA-28-008 was incorporated
CL-600-2C10 and CL-600-2C11 airplanes, serial numbers 10005 through 10065 inclusive, that have accumulated 31,200 flight hours or more since SB 670BA-28-008 was incorporated	Within 8,800 flight hours after the effective date of this AD
CL-600-2C10 and CL-600-2C11 airplanes, serial numbers 10002 through 10004 inclusive and 10066 through 10325 inclusive, that have accumulated less than 31,200 total flight hours as of the effective date of this AD	Prior to the accumulation of 40,000 total flight hours
CL-600-2C10 and CL-600-2C11 airplanes, serial numbers 10002 through 10004 inclusive and 10066 through 10325 inclusive, that have accumulated 31,200 total flight hours or more as of the effective date of this AD	Within 8,800 flight hours after the effective date of this AD
CL-600-2D15 and CL-600-2D24 airplanes, serial numbers 15001 through 15263 inclusive, that have accumulated less than 31,200 total flight hours as of the effective date of this AD	Prior to the accumulation of 40,000 total flight hours
CL-600-2D15 and CL-600-2D24 airplanes, serial numbers 15001 through 15263 inclusive, that have accumulated 31,200 total flight hours or more as of the effective date of this AD	Within 8,800 flight hours after the effective date of this AD
CL-600-2E25 airplanes, serial numbers 19001 through 19013 inclusive, that have accumulated less than 31,200 total flight hours as of the effective date of this AD	Prior to the accumulation of 40,000 total flight hours
CL-600-2E25 airplanes, serial numbers 19001 through 19013 inclusive, that have accumulated 31,200 total flight hours or more as of the effective date of this AD	Within 8,800 flight hours after the effective date of this AD

(h) 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 MHI RJ Aviation ULC's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2020–03, dated March 5, 2020, for related information. This MCAI may be found in the AD docket on the internet at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0388.

(2) For more information about this AD, contact Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email *9-avs-nyaco-cos@faa.gov.*

(j) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 670BA–28–040, dated September 30, 2019.

(ii) [Reserved]

(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.*

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

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

Issued on June 10, 2022.

Christina Underwood,

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

[FR Doc. 2022–16058 Filed 7–26–22; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0457; Project Identifier MCAI–2022–00263–T; Amendment 39–22125; AD 2022–15–05]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. This AD was prompted by a report that cracks were found on the web horizontal flange and inner cap on a certain frame (FR), left-hand (LH) and right-hand (RH) sides, at a certain stringer (STGR). This AD requires repetitive high frequency eddy current (HFEC) inspections for cracks on the web horizontal flange and inner cap, and applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 31, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 31, 2022.

ADDRESSES: For material incorporated by reference (IBR) in this AD, 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 this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0457.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0457; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0030, dated February 25, 2022 (EASA AD 2022–0030) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A318–111, A318–112, A318–121, A318–122, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A320–211, A320–212, A320–214, A320–215, A320–216, A320–231, A320–232, A320–233, A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, and A321–232 airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A318–111, A318–112, A318–121, A318–122, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A320–211, A320–212, A320–214, A320–216, A320–231, A320–232, A320–233, A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, and A321–232 airplanes. The NPRM published in the **Federal Register** on April 14, 2022 (87 FR 22156). The NPRM was prompted by a report that during the inspection for the door stop fitting holes at FR 66 and FR 68 required by EASA AD 2016–0238, dated December 2, 2016; corrected January 4, 2017 (which corresponds to FAA AD 2018–03–12, Amendment 39–19185 (83 FR 5906, February 12, 2018)); cracks were found on the web

horizontal flange and inner cap on FR 68, LH and RH sides, at STGR 22. The NPRM proposed to require repetitive HFEC inspections for cracks on the web horizontal flange and inner cap on FR 68, LH and RH sides, at STGR 22, and applicable corrective actions (*e.g.,* repairs), as specified in EASA AD 2022–0030.

The FAA is issuing this AD to address the cracks on the web horizontal flange and inner cap on FR 68, LH and RH sides, at STGR 22, which could result in reduced structural integrity of the fuselage. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from United Airlines, who supported the NPRM without change.

Conclusion

The FAA reviewed the relevant data, considered the 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. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0030 specifies procedures for repetitive HFEC inspections for cracks at the web horizontal flange and inner cap on FR 68, LH and RH sides, at STGR 22, and applicable corrective actions (*e.g.,* repairs).

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**.

Costs of Compliance

The FAA estimates that this AD affects 1,585 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
28 work-hours × $85 per hour = $2,380	$0	$2,380	$3,772,300

The FAA has received no definitive data on which to base the cost estimates for the on-condition actions 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

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:

2022–15–05 Airbus SAS: Amendment 39–22125; Docket No. FAA–2022–0457; Project Identifier MCAI–2022–00263–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 31, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0030, dated February 25, 2022 (EASA AD 2022–0030).

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that cracks were found on the web horizontal flange and inner cap on frame (FR) 68, left-hand (LH) and right-hand (RH) sides, at stringer (STGR) 22. The FAA is issuing this AD to address the cracks on the web horizontal flange and inner cap on FR 68, LH and RH sides, at STGR 22, which could result in reduced structural integrity of the fuselage.

(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, EASA AD 2022–0030.

(h) Exceptions to EASA AD 2022–0030

(1) Where EASA AD 2022–0030 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2022–0030 does not apply to this AD.

(3) Where paragraph (2) of EASA AD 2022–0030 specifies ''Accomplishment on an aeroplane of (repetitive) maintenance instructions, issued and approved by Airbus,'' for this AD, those instructions must have been approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(4) Where paragraph (3) of EASA AD 2022–0030 specifies if ''discrepancies and/or cracks are detected, before next flight, contact Airbus for approved corrective action(s) instructions and, within the compliance time specified therein, accomplish those instructions accordingly,'' for this AD, if cracks are detected, the cracks must be repaired before further flight using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(5) Where paragraph (4) of EASA AD 2022–0030 specifies ''the instructions provided by Airbus,'' for this AD, those instructions must be approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(i) Additional 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 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-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 EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

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

(j) Related Information

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 206–231–3225; email *dan.rodina@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0030, dated February 25, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0030, 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 this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

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

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

Issued on July 8, 2022.

Christina Underwood,

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

[FR Doc. 2022–16060 Filed 7–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0399; Project Identifier MCAI–2021–00983–T; Amendment 39–22083; AD 2022–12–11]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Embraer S.A. Model ERJ 190–100 ECJ airplanes. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary and that some life limits on some components used on the main landing gear (MLG) may not be properly controlled, due to interchanging those parts between airplane models with different operational loads during repair or overhaul. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations; reviewing maintenance records of the MLG assemblies to determine if any life-limited item has been replaced and reporting those findings; and re-identifying the MLG assemblies and certain components; as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is incorporated by reference. This AD also prohibits installing certain part numbers. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 31, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 31, 2022.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact ANAC, Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* internet *www.anac.gov.br/en/.* You may find this IBR material on the ANAC website at *https://sistemas.anac.gov.br/certificacao/DA/DAE.asp.* 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 *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0399.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0399; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Krista Greer, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3221; email *krista.greer@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

ANAC, which is the aviation authority for Brazil, has issued ANAC AD 2021–08–01, effective August 31, 2021 (ANAC AD 2021–08–01) (also referred to as the MCAI), to correct an unsafe condition for certain Embraer S.A. Model ERJ 190–100 ECJ airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Embraer S.A. Model ERJ 190–100 ECJ airplanes. The NPRM published in the **Federal Register** on April 8, 2022 (87 FR 20787). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary and that some life limits on some components used on the MLG may not be properly controlled, due to interchanging those parts between airplane models with different operational loads during repair or overhaul. The NPRM proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations; reviewing maintenance records of the MLG assemblies to determine if any life-limited item has been replaced and reporting those findings; and re-identifying the MLG assemblies and certain components; as specified in ANAC AD 2021–08–01. The NPRM also proposed to prohibit installing certain part numbers.

The FAA is issuing this AD to address potentially inadequate life limits on the MLG due to different operational loads, which could impact the structural integrity of the airplane. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

The FAA reviewed the relevant data, considered the comment received, 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

ANAC AD 2021–08–01 specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits; reviewing maintenance records of the MLG side stay assembly and the MLG shock strut assembly to determine if any life-limited item has been replaced and reporting those findings; and reidentifying certain part numbers of the MLG side stay assembly and the MLG shock strut assembly and their components. ANAC AD 2021–08–01 also specifies prohibiting the installation of certain part numbers. 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.

Interim Action

The FAA considers this AD interim action. The inspection reports required by this AD will enable the manufacturer to gain better insight into the extent to which components have been interchanged between models and determine if additional actions are required to address the identified unsafe condition. Based on the result of the manufacturer's analyses, the FAA might consider further rulemaking

Costs of Compliance

The FAA estimates that this AD affects 10 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

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

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
6 work-hours × $85 per hour = $510	$0	$510	$5,100

* Table does not include estimated costs for reporting and revising the existing maintenance or inspection program.

The FAA estimates that it would take about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting on U.S. operators to be $850, or $85 per product.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

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

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:

2022–12–11 Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.): Amendment 39–22083; Docket No. FAA–2022–0399; Project Identifier MCAI–2021–00983–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 31, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.) Model ERJ 190–100 ECJ airplanes, certificated in any category, as identified in Agência Nacional de Aviação Civil (ANAC) AD 2021–08–01, effective August 31, 2021 (ANAC AD 2021–08–01).

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks; 32, Landing Gear.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary and that some life limits on some structural parts used on the main landing gear (MLG) may not be properly controlled, due to interchanging those parts between airplane models with different operational loads during repair or overhaul. The FAA is issuing this AD to address potentially inadequate life limits on the MLG due to different operational loads, which could impact the structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, ANAC AD 2021–08–01.

(h) Exceptions to ANAC AD 2021–08–01

(1) Where ANAC AD 2021–08–01 refers to its effective date, this AD requires using the effective date of this AD.

(2) The initial compliance time for doing the tasks specified in paragraph (a) of ANAC AD 2021–08–01 is no later than the applicable ''life limit cycles'' specified in the service information referenced in ANAC AD 2021–08–01, or within 90 days after the effective date of this AD, whichever occurs later.

(3) Paragraph (b) of ANAC AD 2021–08–01 specifies to report inspection results to Embraer within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(3)(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 90 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

(4) The ''Alternative Method of Compliance (AMOC)'' section of ANAC AD 2021–08–01 does not apply to this AD.

(i) Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed, unless they are approved as specified in paragraph (a) of ANAC AD 2021–08–01.

(j) Additional 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) 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 ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(k) Related Information

For more information about this AD, contact Krista Greer, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3221; email *krista.greer@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Agência Nacional de Aviação Civil (ANAC) AD 2021–08–01, effective August 31, 2021.

(ii) [Reserved]

(3) For ANAC AD 2021–08–01, contact ANAC, Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* internet *www.anac.gov.br/en/.* You may find this ANAC AD on the ANAC website at *https://sistemas.anac.gov.br/certificacao/DA/DAE.asp.*

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

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

Issued on June 10, 2022.

Christina Underwood,

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

[FR Doc. 2022–16059 Filed 7–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9959]

RIN 1545–BP70

Guidance Related to the Foreign Tax Credit; Clarification of Foreign-Derived Intangible Income; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule; correction and correcting amendments.

SUMMARY: This document contains corrections to Treasury Decision 9959, which was published in the **Federal Register** on Tuesday, January 4, 2022. Treasury Decision 9959 contained final regulations relating to the foreign tax credit, including the disallowance of a credit or deduction for foreign income taxes with respect to dividends eligible for a dividends-received deduction, the allocation and apportionment of interest expense, foreign income tax expense, and certain deductions of life insurance companies; the definition of a foreign income tax and a tax in lieu of an income tax; the definition of foreign branch category income; and the time at which foreign taxes accrue and can be claimed as a credit.

DATES:

Effective date: These corrections are effective on July 27, 2022.

Applicability dates: For dates of applicability, see §§ 1.245A(d)–1(f), 1.338–9(d)(4), 1.367(b)–4(h), 1.861–20(i), 1.901–2(h), 1.904–4(q), 1.905–1(h), 1.951A–7(b), 1.960–7(b).

FOR FURTHER INFORMATION CONTACT: Concerning §§ 1.245A(d)–1, 1.336–2, 1.338–9, 1.861–20, 1.960–1, and 1.960–2, Suzanne M. Walsh, (202) 317–4908 and Teisha Ruggiero, (202) 317–5282; concerning §§ 1.861–8 and 1.861–13, Jeffrey P. Cowan, (202) 317–4924; concerning §§ 1.901–2 and 1.905–1, Tianlin (Laura) Shi, (202) 317–6987; concerning § 1.367(b)–4, Arielle Borsos, (202) 317–4939; concerning § 1.904–4, Jeffrey L. Parry, (202) 317–4916; concerning § 1.951A–2, Jorge M. Oben and Larry Pounders, (202) 317–6934 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9959) that are the subject of this correction are issued under sections 245A, 338, 367, 861, 901, 904, 905, 951A, and 960 of the Internal Revenue Code.

Need for Correction

As published on January 4, 2022 (87 FR 276), the final regulations (TD 9959) contain errors that need to be corrected.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Corrections to the Federal Register

Accordingly, the final regulations (TD 9959) that are the subject of FR Doc. 2021–27887, starting on page 276 in the **Federal Register** of January 4, 2022, are corrected as follows:

§ 1.861 13(a) [Corrected]

■ 1. On page 326, in the third column, amendatory instruction 20, amending § 1.861–13(a), is removed.

■ 2. On page 326, in the second column, through page 375, in the third column, amendatory instructions 21 through 34 are redesignated as amendatory instructions 20 through 33.

§ 1.861–20 [Corrected]

■ 3. On page 327, in the second column, in newly redesignated amendatory instruction 21, amending § 1.861–20, instruction 12 is removed and instructions 13 through 15 are redesignated as instructions 12 through 14.

§ 1.960–1 [Corrected]

■ 4. On page 374, in the second and third columns, in newly redesignated amendatory instruction 31, amending § 1.960–1, the second instruction 21 and instructions 22 and 23 are redesignated as instructions 22 through 24, respectively.

Corrections to the Regulations

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.245A(d)–1 is amended:

■ a. In paragraph (c)(26) by adding the language ''in'' after the word ''forth'';

■ b. In the second sentence of paragraph (d)(4)(i) by removing the third parenthesis at the end;

■ c. In the fourth sentence of paragraph (d)(4)(ii)(B)(*2*) by removing the language ''Year 2'' and adding the language ''Year 3'' in its place;

■ d. By revising paragraph (d)(6)(i); and

■ e. By revising the fifth and seventh sentences of paragraph (d)(6)(ii)(B) and

the third and fifth sentences of paragraph (d)(6)(ii)(C).

The revisions read as follows:

§ 1.245A (d)–1 Disallowance of foreign tax credit or deduction.

* * * * *

(d) * * *

(6) * * *

(i) *Facts.* CFC is a reverse hybrid. In Year 1, CFC earns a $500x item of gain described in section 907(c)(1)(B) that is non-inclusion income. CFC also earns for Federal income tax purposes and Country A tax purposes a $1,000x item of royalty income, of which $500x is gross included tested income and $500x is non-inclusion income. USP includes the $500x item of foreign gain and the $1,000x item of foreign gross royalty income in its Country A taxable income, and the items are foreign law pass-through income. If CFC included these items under Country A tax law, its $1,000x of royalty income for Federal income tax purposes would be the corresponding U.S. item for the foreign gross royalty income, and its $500x of gain for Federal income tax purposes would be the corresponding U.S. item for the foreign gain. Country A imposes a $150x foreign income tax on USP with respect to $1,500x of foreign gross income.

(ii) * * *

(B) * * * CFC is therefore treated as including a $1,000x foreign gross royalty item and a $500x foreign gross income item of gain and paying $150x of Country A tax in Year 1. * * * No foreign gross income is assigned to the section 245A(d) income group because neither the corresponding U.S. item of royalty income nor the corresponding U.S. item of gain is assigned to the section 245A(d) income group. * * *

(C) * * * For the reasons described in paragraph (d)(6)(ii)(B) of this section, under § 1.861–20(d)(3)(i)(C) CFC is treated as including a $1,000x foreign gross royalty item and a $500x foreign gross income item of gain and paying $150x of Country A tax in Year 1. * * * For Federal income tax purposes, the $500x item of gain and $500x of the $1,000x item of royalty income are items of non-inclusion income that are therefore assigned to the non-inclusion income group. * * *

* * * * *

§ 1.338 –9 [Amended]

■ **Par. 3.** Section 1.338–9 is amended by removing the language ''§ 1.901–2(a)(1))'' from the first sentence of paragraph (d)(1) and adding the language ''§ 1.901–2(a))'' in its place.

§ 1.367 (b)–4 [Amended]

■ **Par. 4.** Section 1.367(b)–4 is amended by removing ''2020 resulting'' and ''2020 but'' in the last sentence of paragraph (h) and adding ''2020, resulting'' and ''2020, but'', respectively, in their place.

§ 1.861–8 [Amended]

■ **Par. 5.** Section 1.861–8 is amended by removing the language ''and example 17 of paragraph (g) of this section'' from the third sentence of paragraph (b)(2).

■ **Par. 6.** Section 1.861–20 is amended:

■ a. By revising the seventh sentence of paragraph (d)(3)(v)(A);

■ b. By revising paragraphs (d)(3)(v)(D), (d)(3)(v)(E)(*2*), and (d)(3)(v)(E)(*8*); and

■ c. In paragraph (g)(14)(i) by removing the language ''§''FDE2 tested unit'','' and adding the language '''FDE2 tested unit,'' '' in its place.

The revisions read as follows:

§ 1.861–20 Allocation and apportionment of foreign income taxes.

* * * * *

(d) * * *

(3) * * *

(v) * * *

(A) * * * The rules of paragraph (d)(3)(v)(D) of this section apply to assign to statutory and residual groupings items of foreign gross income arising from disregarded payments, other than the portions of disregarded payments that are reattribution payments, in connection with disregarded sales or exchanges of property. * * *

* * * * *

(D) *Disregarded payments in connection with disregarded sales or exchanges of property.* An item of foreign gross income that is attributable to gain recognized under foreign law by reason of a disregarded payment, other than the portion of the disregarded payment that is a reattribution payment, received in exchange for property is characterized and assigned under the rules of paragraph (d)(2) of this section. See paragraph (d)(3)(v)(B) of this section for rules for assigning an item of foreign gross income attributable to the portion of a disregarded payment that is a reattribution payment, including a reattribution payment received in exchange for property.

(E) * * *

(*2*) *Contribution.* The term *contribution* means the excess amount of a disregarded payment, other than a disregarded payment received in exchange for property, made by a taxable unit to another taxable unit that the first taxable unit owns over the portion of the disregarded payment, if any, that is a reattribution payment.

* * * * *

(*8*) *Remittance.* The term *remittance* means the excess amount, other than an amount that is treated as a contribution under paragraph (d)(3)(v)(E)(*2*) of this section, of a disregarded payment, other than a disregarded payment received in exchange for property, made by a taxable unit to a second taxable unit (including a second taxable unit that shares the same owner as the payor taxable unit) over the portion of the disregarded payment, if any, that is a reattribution payment.

* * * * *

■ **Par. 7.**Section 1.901–2 is amended:

■ a. By revising paragraph (a)(1)(iii);

■ b. In the first sentence of paragraph (b)(4)(i)(A) by removing the language ''including significant capital expenditures'' and adding the language ''including capital expenditures'' in its place;

■ c. By revising the fourth and fifth sentences of paragraph (b)(4)(i)(C)(*1*);

■ d. By revising paragraph (b)(4)(i)(C)(*3*);

■ e. In paragraph (b)(5)(ii) by removing the language ''resident, but'' and adding the language ''resident. The foreign tax law'' in its place; and

■ f. By adding a sentence before the second sentence of paragraph (h).

The revisions read as follows:

§ 1.901–2 Income, war profits, or excess profits tax paid or accrued.

(a) * * *

(1) * * *

(iii) *Coordination with treaties.* A foreign levy that is treated as an income tax under the relief from double taxation article of an income tax treaty entered into by the United States and the foreign country imposing the levy is a foreign income tax if the levy is, as determined under such income tax treaty, paid by a citizen or resident of the United States that elects benefits under the treaty. In addition, a foreign levy (including a foreign levy paid by a controlled foreign corporation) that is modified by an applicable income tax treaty to which the foreign country imposing the levy is a party may qualify as a foreign income tax notwithstanding that the unmodified foreign levy does not satisfy the requirements in paragraph (b) of this section or the requirements of § 1.903–1(b) if the levy, as modified by such treaty, satisfies the requirements of paragraph (b) of this section or the requirements of § 1.903–1(b). See paragraph (d)(1)(iv) of this section for rules treating as a separate levy a foreign tax that is limited in its application or

otherwise modified by the terms of an income tax treaty to which the foreign country imposing the tax is a party.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(C) * * *

(*1*) * * * Foreign tax law is considered to permit recovery of significant costs and expenses even if recovery of all or a portion of certain costs or expenses is disallowed, if such disallowance is consistent with any principle underlying the disallowances required under the Internal Revenue Code, including the principles of limiting base erosion or profit shifting and public policy concerns. For example, a foreign tax is considered to permit recovery of significant costs and expenses if the foreign tax law limits interest deductions based on a measure of taxable income (determined either before or after depreciation and amortization), disallows deductions in connection with hybrid transactions, disallows deductions attributable to gross receipts that in whole or in part are excluded, exempt or eliminated from taxable income, or disallows certain deductions based on public policy considerations similar to those underlying the disallowances contained in section 162. * * *

* * * * *

(*3*) *Timing of recovery.* A foreign tax law permits recovery of significant costs and expenses even if such costs and expenses are recovered earlier or later than they are recovered under the Internal Revenue Code unless the time of recovery is so much later as effectively to constitute a denial of such recovery. The amount of costs and expenses that is recovered under the foreign tax law is neither discounted nor augmented by taking into account the time value of money attributable to any acceleration or deferral of a tax benefit resulting from the foreign law cost recovery method compared to when tax would be paid under the Internal Revenue Code. Therefore, a foreign tax satisfies the cost recovery requirement if items deductible under the Internal Revenue Code are capitalized under the foreign tax law and recovered either immediately, on a recurring basis over time, or upon the occurrence of some future event (for example, upon the property becoming worthless or being disposed of), or if the recovery of items capitalized under the Internal Revenue Code occurs more or less rapidly than under the foreign tax law.

* * * * *

(h) * * * For foreign taxes that relate to (and if creditable are considered to accrue in) taxable years beginning before December 28, 2021, and that are remitted in taxable years beginning on or after December 28, 2021, by a taxpayer that accounts for foreign income taxes on the accrual basis, see § 1.901–2 as contained in 26 CFR part 1 revised as of April 1, 2021. * * *

* * * * *

■ **Par. 8.** Section 1.904–4 is amended:

■ a. By revising paragraphs (f)(3)(viii) and (x) and (q)(1); and

■ b. By removing the language ''Paragraph (f) of this section applies'' in paragraph (q)(3) and adding the language ''Paragraphs (b)(2)(i)(A), (c)(4), and (f) of this section apply'' in its place.

The revisions read as follows:

§ 1.904–4 Separate application of section 904 with respect to certain categories of income.

* * * * *

(f) * * *

(3) * * *

(viii) *Foreign branch group.* The term *foreign branch group* means a foreign branch and any non-branch taxable units (other than an individual or a domestic corporation), to the extent that the foreign branch owns the non-branch taxable unit (if any) directly or indirectly through one or more other non-branch taxable units.

* * * * *

(x) *Foreign branch owner group.* The term *foreign branch owner group* means a foreign branch owner and any non-branch taxable units (other than an individual or a domestic corporation), to the extent that the foreign branch owner owns the non-branch taxable unit (if any) directly or indirectly through one or more other non-branch taxable units.

* * * * *

(q) * * *

(1) Except as provided in paragraphs (q)(2) and (3) of this section, this section applies for taxable years that both begin after December 31, 2017, and end on or after December 4, 2018.

* * * * *

§ 1.905–1 [Amended]

■ **Par. 9.** Section 1.905–1 is amended by removing the language ''§ 1.901–2(a)(3)(i)'' from the third sentence of paragraph (c)(1) and adding the language ''§ 1.901–2(a)(3)'' in its place.

■ **Par. 10.** Section 1.951A–2 is amended by:

■ a. Removing the language ''current year taxes (as defined in § 1.960–1(b)(4))'' from the first sentence of paragraph (c)(7)(vii) and adding the language ''eligible current year taxes (as defined in § 1.960–1(b)(5))'' in its place;

■ b. Adding a heading for paragraph (c)(8)(iii)(A)(*2*)(*ii*);

■ c. Adding the language ''eligible'' before the language ''current year taxes'' in the first sentence of paragraph (c)(8)(iii)(A)(*2*)(*iv*); and

■ d. Adding the language ''eligible'' before the language ''current year taxes'' in the first sentence of paragraph (c)(8)(iii)(C)(*2*)(*v*).

The addition reads as follows:

§ 1.951A–2 Tested income and tested loss.

* * * * *

(c) * * *

(8) * * *

(iii) * * *

(A) * * *

(*2*) * * *

(*ii*) *Foreign income tax deduction.*

* * *

* * * * *

■ **Par. 11.** Section 1.960–2 is amended by revising paragraph (c)(7)(i)(A) to read as follows:

§ 1.960–2 Foreign income taxes deemed paid under sections 960(a) and (d).

* * * * *

(c) * * *

(7) * * *

(i) * * *

(A) *Facts.* USP, a domestic corporation, owns 100% of the stock of a number of controlled foreign corporations, including CFC1. USP and CFC1 each use the calendar year as their U.S. taxable year. CFC1 uses the ''u'' as its functional currency. At all relevant times, 1u = $1x. For its U.S. taxable year ending December 31, 2018, after application of the rules in § 1.960–1(d), the income of CFC1 is assigned to a single income group: 2,000u of income from the sale of goods in a tested income group within the general category (''tested income group''). CFC1 has current year taxes, all of which are eligible current year taxes, translated into U.S. dollars, of $400x that are all allocated and apportioned to the tested income group. For its U.S. taxable year ending December 31, 2018, USP has a GILTI inclusion amount determined by reference to all of its controlled foreign corporations, including CFC1, of $6,000x, and an aggregate amount described in section 951A(c)(1)(A) and § 1.951A–1(c)(2)(i) of $10,000x. All of the income in CFC1's tested income group is included in computing USP's

aggregate amount described in section 951A(c)(1)(A) and § 1.951A–1(c)(2)(i).

* * * * *

Oluwafunmilayo A. Taylor,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2022–15867 Filed 7–26–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9959]

RIN 1545–BP70

Guidance Related to the Foreign Tax Credit; Clarification of Foreign-Derived Intangible Income; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains corrections to Treasury Decision 9959, which was published in the **Federal Register** on Tuesday, January 4, 2022. Treasury Decision 9959 contained final regulations relating to the foreign tax credit, including the disallowance of a credit or deduction for foreign income taxes with respect to dividends eligible for a dividends-received deduction, the allocation and apportionment of interest expense, foreign income tax expense, and certain deductions of life insurance companies; the definition of a foreign income tax and a tax in lieu of an income tax; the definition of foreign branch category income; and the time at which foreign taxes accrue and can be claimed as a credit.

DATES: These corrections are effective on July 27, 2022 and applicable on or after January 4, 2022.

FOR FURTHER INFORMATION CONTACT: Concerning §§ 1.861–20, 1.960–1, and 1.960–2, Suzanne M. Walsh, (202) 317–4908, and Teisha Ruggiero, (202) 317–5282; concerning § 1.901–2, Tianlin (Laura) Shi, (202) 317–6987 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9959) that are the subject of this correction are issued under sections 861, 901, and 903 of the Internal Revenue Code.

Correction

As published on January 4, 2022 (87 FR 276), the final regulations (TD 9959) contain errors that need to be corrected.

Correction of Publication

Accordingly, the final regulations (TD 9959) that are the subject of FR Doc. 2021–27887, starting on page 276 in the **Federal Register** of January 4, 2022, are corrected as follows:

1. On page 278, in the first column, in the second line from the top of the second full paragraph, the language ''§ 1.861–20,'' is corrected to read ''the rules of § 1.861–20,''.

2. On page 281, in the second column, in the fourth and fifth lines of the second full paragraph, the language, ''that, together, they'' is corrected to read ''that the rules''.

3. On page 281, in the second column, the fifth sentence of the second full paragraph is corrected to read: ''To fill this gap, § 1.861–20(d)(3)(v)(E) of the final regulations defines a 'contribution' as the excess amount of a disregarded payment, other than a payment described in § 1.861–20(d)(3)(v)(D), made by a taxable unit to another taxable unit that the first taxable unit owns over the portion of the disregarded payment, if any, that is a reattribution payment.''

4. On page 281, in the third column, in the third and fourth lines from the top of the first partial paragraph, the language ''that is neither a contribution nor'' is corrected to read ''other than a contribution, a payment described in § 1.861–20(d)(3)(v)(D), or''.

5. On page 287, in the third column, in the fifth sentence of the first full paragraph, the language, '''*income,* war profits, and profits taxes'.'' is corrected to read '' '*income,* war profits, and profits taxes.' ''.

6. On page 291, in the first column, in the third line from the bottom of the first partial paragraph, the language, ''section 903'' is corrected to read ''sections 901 and 903.''

7. On page 291, in the first column, the first and second sentences of the first full paragraph are corrected to read: ''Another comment recommended that the example in proposed § 1.901–2(c)(3) (§ 1.901–2(b)(5)(iii) of the final regulations) be expanded to illustrate the application of the attribution requirement in the case where a nonresident taxpayer is earning income from electronically supplied services in a country that imposes tax on such services (ESS tax) and the taxpayer either (1) maintains its own branch in the foreign country imposing the tax, with employees of the branch conducting routine sales, marketing, and customer support functions or (2) uses a related party disregarded entity resident in that country to perform local marketing, customer support, and other routine functions that is subject to that country's resident corporate income tax. With respect to the second scenario, the comment noted that where the ESS tax is imposed on the nonresident but the resident disregarded entity is subject to a resident corporate income tax and the base of such corporate income tax is determined under arm's length principles, without taking into account as a significant factor the location of customers, users, or any other similar destination-based criterion, then such resident corporate income tax would meet the residence-based nexus requirement and would be creditable but that the ESS tax imposed on the nonresident taxpayer would not meet the nexus requirements.''.

8. On page 292, in the second column, in the seventh line from the bottom of the last partial paragraph, the language ''§ 1.901–2(a)(3).'' is corrected to read ''§ 1.901–2(b)(1).''.

9. On page 294, in the second column, under the paragraph heading ''2. Alternative Gross Receipts Test'', in the third line, the language ''§ 1.901–2(b)(3),'' is corrected to read ''§ 1.901–2(b)(3)(i)(B),''.

10. On page 298, in the first column, in the second and third lines from the bottom of the last partial paragraph, delete the language ''§ 1.901–2(b)(4)(i)(C)(*1*) provides that''.

11. On page 310, in the third column, the fourth line from the bottom of the first partial paragraph, the language, ''there is,'' is corrected to read ''there is''.

12. On page 311, in the first column, in the first and second lines from the bottom of the first partial paragraph, the language, ''a activity'' is corrected to read ''an activity''.

13. On page 317, in the second column, before the caption ''Drafting Information,'' add section VII. to read as follows:

VII. Congressional Review Act

The Administrator of the Office of Information and Regulatory Affairs of the OMB has determined that this Treasury decision is a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 *et seq.*) (''CRA''). Under section 801(3) of the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. Accordingly, the Treasury Department and IRS are adopting these final regulations with the delayed effective date generally prescribed under the Congressional Review Act.

Oluwafunmilayo A. Taylor,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2022–15868 Filed 7–26–22; 8:45 am]

BILLING CODE 4830–01–P

Proposed Rules

Federal Register
Vol. 87, No. 143
Wednesday, July 27, 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AF85

Assessments, Amendments To Incorporate Troubled Debt Restructuring Accounting Standards Update

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation seeks comment on a proposed rule that would incorporate updated accounting standards in the risk-based deposit insurance assessment system applicable to all large insured depository institutions (IDIs), including highly complex IDIs. The FDIC calculates deposit insurance assessment rates for large and highly complex IDIs based on supervisory ratings and financial measures, including the underperforming assets ratio and the higher-risk assets ratio, both of which are determined, in part, using restructured loans or troubled debt restructurings (TDRs). The FDIC is proposing to include modifications to borrowers experiencing financial difficulty, an accounting term recently introduced by the Financial Accounting Standards Board (FASB) to replace TDRs, in the underperforming assets ratio and higher-risk assets ratio for purposes of deposit insurance assessments.

DATES: Comments must be received no later than August 26, 2022.

ADDRESSES: You may submit comments on the notice of proposed rulemaking using any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow the instructions for submitting comments on the agency website.
- *Email: comments@fdic.gov.* Include RIN 3064–AF85 on the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments—RIN 3064–AF85, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m.
- *Public Inspection:* Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Scott Ciardi, Chief, Large Bank Pricing, 202–898–7079, *sciardi@fdic.gov;* Ashley Mihalik, Chief, Banking and Regulatory Policy, 202–898–3793, *amihalik@fdic.gov;* Kathryn Marks, Counsel, 202–898–3896, *kmarks@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Policy Objective

The FDIC's objective in setting forth this proposal is to ensure that the risk-based deposit insurance assessment system applicable to large and highly complex banks conforms to recently updated accounting standards.[1] In March 2022, FASB issued Accounting Standards Update No. 2022–02 (ASU 2022–02), ''Financial Instruments—Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures,'' that eliminates the recognition and measurement guidance of TDRs and, instead, introduces new requirements related to financial statement disclosure of certain modifications of receivables made to borrowers experiencing financial difficulty, or ''modifications to borrowers experiencing financial difficulty.'' [2] Risk-based deposit insurance assessments for large and highly complex banks are determined, in part, using TDRs. Therefore, to incorporate the updated accounting standards, the proposed amendment would include modifications to borrowers experiencing financial difficulty in the description of the underperforming assets ratio, which includes restructured loans, and definitions used in the higher-risk assets ratio, which reference TDRs. Both of these ratios are used to determine risk-based deposit insurance assessments for large and highly complex banks.

II. Background

A. Deposit Insurance Assessments

The Federal Deposit Insurance Act (FDI Act) requires that the FDIC establish a risk-based deposit insurance assessment system.[3] The FDIC charges all IDIs an assessment for deposit insurance equal to the IDI's deposit insurance assessment base multiplied by its risk-based assessment rate.[4] An IDI's assessment base and assessment rate are determined each quarter using supervisory ratings and information collected from the Consolidated Reports of Condition and Income (Call Report) or the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign

[1] For deposit insurance assessment purposes, large IDIs are generally those that have $10 billion or more in total assets. A highly complex IDI is generally defined as an institution that has $50 billion or more in total assets and is controlled by a parent holding company that has $500 billion or more in total assets, or is a processing bank or trust company. *See* 12 CFR 327.8(f) and (g). As used in this proposed rule, the term ''large bank'' is synonymous with ''large institution,'' and the term ''highly complex bank'' is synonymous with ''highly complex institution,'' as those terms are defined in 12 CFR 327.8.

[2] FASB Accounting Standards Update No. 2022–02, ''Financial Instruments—Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures,'' March 2022 available at *https://www.fasb.org/page/getarticle?uid=fasb_Media_Advisory_03-31-22.*

[3] 12 U.S.C. 1817(b).

[4] *See* 12 CFR 327.3(b)(1).

Banks (FFIEC 002), as appropriate. Generally, an IDI's assessment base equals its average consolidated total assets minus its average tangible equity.[5]

An IDI's assessment rate is calculated using different methods dependent upon whether the IDI is classified for deposit insurance assessment purposes as a small, large, or highly complex bank.[6] Large and highly complex banks are assessed using a scorecard approach that combines CAMELS ratings and certain forward-looking financial measures to assess the risk that a large or highly complex bank poses to the Deposit Insurance Fund (DIF).[7] The score that each large or highly complex bank receives is used to determine its deposit insurance assessment rate. One scorecard applies to most large banks and another applies to highly complex banks. Both scorecards use quantitative financial measures that are useful for predicting a large or highly complex bank's long-term performance. Two of the measures in the large and highly complex bank scorecards, the credit quality measure and the concentration measure, are determined using restructured loans or TDRs. These measures are described in more detail below.

B. Credit Quality Measure

Both the large bank and the highly complex bank scorecards include a credit quality measure. The credit quality measure is the greater of (1) the criticized and classified items to the sum of Tier 1 capital and reserves score or (2) the underperforming assets to the sum of Tier 1 capital and reserves score.[8] Each risk measure, including the criticized and classified items ratio and the underperforming assets ratio, is converted to a score between 0 and 100 based upon minimum and maximum cutoff values.[9]

The underperforming assets ratio is described identically in the large and highly complex bank scorecards as the sum of loans that are 30 days or more past due and still accruing interest, nonaccrual loans, restructured loans (including restructured 1–4 family loans), and other real estate owned (ORE), excluding the maximum amount recoverable from the U.S. Government, its agencies, or Government-sponsored agencies, under guarantee or insurance provisions, divided by a sum of Tier 1 capital and reserves.[10]

The specific data used to identify the ''restructured loans'' referenced in the above description are those items that banks disclose in their Call Report on Schedule RC–C, Part I, Memorandum items 1.a. through 1.g, ''Loans restructured in troubled debt restructurings that are in compliance with their modified terms.'' The portion of restructured loans that is guaranteed or insured by the U.S. Government are excluded from underperforming assets. This data is collected in Call Report Schedule RC–O, Memorandum item 16, ''Portion of loans restructured in troubled debt restructurings that are in compliance with their modified terms and are guaranteed or insured by the U.S. government.''

C. Concentration Measure

Both the large and highly complex bank scorecards also include a concentration measure. The concentration measure is the greater of (1) the higher-risk assets to the sum of Tier 1 capital and reserves score or (2) the growth-adjusted portfolio concentrations score.[11] Each risk measure, including the criticized and classified items ratio and the underperforming assets ratio, is converted to a score between 0 and 100 based upon minimum and maximum cutoff values.[12] The higher-risk assets ratio captures the risk associated with concentrated lending in higher-risk areas. Higher-risk assets include construction and development (C&D) loans, higher-risk commercial and industrial (C&I) loans, higher-risk consumer loans, nontraditional mortgage loans, and higher-risk securitizations.[13]

Higher-risk C&I loans are defined, in part, based on whether the loan is owed to the bank by a higher-risk C&I borrower, which includes, among other things, a borrower that obtains a refinance of an existing C&I loan, subject to certain conditions. Higher-risk consumer loans are defined as all consumer loans where, as of origination, or, if the loan has been refinanced, as of refinance, the probability of default within two years is greater than 20 percent, excluding those consumer loans that meet the definition of a nontraditional mortgage loan. A refinance for purposes of higher-risk C&I loans and higher-risk consumer loans is defined in the assessment regulations and explicitly does not include modifications to a loan that would otherwise meet the definition of a refinance, but that result in the classification of a loan as a TDR.

D. FASB's Elimination of Troubled Debt Restructurings

On March 31, 2022, FASB issued ASU 2022–02.[14] This update eliminated the recognition and measurement guidance for TDRs for all entities that have adopted ASU 2016–13, ''Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments'' and the Current Expected Credit Losses (CECL) methodology.[15] The rationale was that ASU 2016–13 requires the measurement and recording of lifetime expected credit losses on an asset that is within the scope of ASU 2016–13, and as a result, credit losses from TDRs have been captured in the allowance for credit losses. Therefore, stakeholders observed and asserted that the additional designation of a loan modification as a TDR and the related accounting were unnecessarily complex and provided less meaningful information than under the incurred loss methodology.[16]

The update eliminates the recognition of TDRs and, instead, introduces new financial statement disclosure requirements related to certain modifications of receivables made to borrowers experiencing financial difficulty, or ''modifications to borrowers experiencing financial difficulty.'' Such modifications are limited to those that result in principal forgiveness, interest rate reductions, other-than-insignificant payment delays, or term extensions in the current reporting period. Modifications to borrowers experiencing financial difficulty may be different from those previously captured in TDR disclosures because an entity no longer would have to determine whether the creditor has granted a concession, which is a current requirement to determine whether a modification represents a TDR. The update requires entities to disclose information about (a) the types of modifications provided, disaggregated by modification type, (b) the expected

[5] *See* 12 CFR 327.5.

[6] *See* 12 CFR 327.8(e), (f), and (g).

[7] *See* 12 CFR 327.16(b); *see also* 76 FR 10672 (Feb. 25, 2011) and 77 FR 66000 (Oct. 31, 2012).

[8] *See* 12 CFR 327.16(b)(1)(ii)(A)(*2*)(*iv*).

[9] *See* 12 CFR part 327, appendix B.

[10] *See* 12 CFR part 327, appendix A.

[11] *See* 12 CFR 327.16(b)(1)(ii)(A)(*2*)(*iii*).

[12] *See* 12 CFR part 327, appendix C.

[13] *Id.*

[14] FASB Accounting Standards Update No. 2022–02, ''Financial Instruments—Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures'' available at *https://www.fasb.org/Page/ShowPdf?path=ASU+2022-02.pdf.*

[15] FASB Accounting Standards Update No. 2016–13, ''Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments,'' available at *https://www.fasb.org/Page/ShowPdf?path=ASU+2016-13.pdf.*

[16] FASB Accounting Standards Update No. 2022–02, at BC19, pp. 57–58.

financial effect of those modifications, and (c) the performance of the loans after modification.

For entities that have adopted CECL, ASU 2022–02 is effective for fiscal years beginning after December 15, 2022.[17] FASB also permitted the early adoption of ASU 2022–02 by any entity that has adopted CECL. For regulatory reporting purposes, if an institution chooses to early adopt ASU 2022–02 during 2022, Supplemental Instructions to the Call Report specify that the institution should implement ASU 2022–02 for the same quarter-end report date and report ''modifications to borrowers experiencing financial difficulty'' in the current TDR Call Report line items.[18] These line items include Schedule RC–C, Part I, Memorandum items 1.a. through 1.g., which are used to identify ''restructured loans'' for the underperforming asset ratio used in the large and highly complex bank scorecards, described above. As a result, a large or highly complex institution that has early adopted ASU 2022–02 and is reporting modifications to borrowers experiencing financial difficulty in the current TDR Call Report line items will be assigned a deposit insurance assessment rate that relies, in part, on this reporting. The FDIC and other members of the Federal Financial Institutions Examination Council (FFIEC) are planning to revise the Call Report forms and instructions to replace the current TDR terminology with updated language from ASU 2022–02 for the first quarter of 2023.

III. Proposed Rule

A. Summary

The FDIC proposes to incorporate into the large and highly complex bank assessment scorecards the updated accounting standard that eliminates the recognition of TDRs and, instead, requires new financial statement disclosures on ''modifications to borrowers experiencing financial difficulty.'' The FDIC is proposing to expressly define restructured loans in the underperforming assets ratio to include ''modifications to borrowers experiencing financial difficulty.'' The FDIC is also proposing to amend the definition of a refinance for the purposes of determining whether a loan is a higher-risk C&I loan or a higher-risk consumer loan, both elements of the higher-risk assets ratio. Under the proposal, a refinance would not include modifications to a loan that otherwise would meet the definition of a refinance, but that result in the classification of a loan as a modification to borrowers experiencing financial difficulty. This proposal would not affect the small bank deposit insurance assessment system.

B. Underperforming Assets Ratio

The FDIC proposes to amend the underperforming assets ratio used in the large and highly complex bank pricing scorecards to conform to the updated accounting standards in ASU 2022–02. The amended text explicitly defines restructured loans for large and highly complex banks that have adopted CECL and ASU 2022–02 as modifications to borrowers experiencing financial difficulty. For the remaining large and highly complex banks that have not yet adopted CECL and ASU 2022–02, the FDIC would continue to use TDRs for restructured loans, and the amended text would explicitly define restructured loans for these banks as TDRs.

The FDIC has included restructured loans in the underperforming assets ratio since the introduction of the large and highly complex bank scorecards in 2011. Restructured loans, in the context of the underperforming assets measure, typically present an elevated level of credit risk because they represent loans to borrowers unable to perform according to the original contractual terms. The FDIC believes it is important to capture such elevated credit risk in its measurement of credit quality. The FDIC believes the accounting term introduced by FASB in ASU 2022–02, ''modifications to borrowers experiencing financial difficulty,'' will provide a similar and meaningful indicator of credit risk.

C. Higher-Risk Assets Ratio

The FDIC proposes to amend the definition of a refinance, in determining whether a loan is a higher-risk C&I loan or a higher-risk consumer loan for deposit insurance assessment purposes, to conform to the updated accounting standards in ASU 2022–02. Specifically, a refinance of a C&I loan would not include a modification or series of modifications to a commercial loan that would otherwise meet the definition of a refinance, but that result in the classification of a loan as a modification to borrowers experiencing financial difficulty, for a large or highly complex bank that has adopted CECL and ASU 2022–02, or that result in the classification of a loan as a TDR, for all remaining large and highly complex banks. For purposes of higher-risk consumer loans, a refinance would not include modifications to a loan that would otherwise meet the definition of a refinance, but that result in the classification of a loan as a modification to borrowers experiencing financial difficulty, for a large or highly complex bank that has adopted CECL and ASU 2022–02, or that result in the classification of a loan as a TDR, for all remaining large and highly complex banks.

Question 1: The FDIC invites comment on its proposal to include modifications to borrowers experiencing financial difficulty in the definition of restructured loans, used in part to determine the underperforming assets ratio, and in the definition of refinance, used in part to determine the higher-risk assets ratio. Does the proposal appropriately meet the objective to incorporate updated accounting standards under ASU 2022–02 into the large and highly complex bank scorecards?

IV. Expected Effects

As of December 31, 2021, the FDIC insured 148 banks that were classified as large or highly complex for deposit insurance assessment purposes, and that would be affected by this proposed rule.[19] The FDIC expects most of these institutions will adopt CECL by January 1, 2023, the proposed effective date of the rule.

The primary expected effect of the proposed rule is the change in underperforming assets, and consequent change in assessment rates, that could occur as a result of the difference between the amount of TDRs that most banks are currently reporting and the amount of modifications to borrowers experiencing financial difficulty that banks will report upon adoption of ASU 2022–02. The effect of this proposed rule on assessments paid by large and highly complex banks is difficult to estimate since most banks are not yet reporting modifications to borrowers experiencing financial difficulty, and the FDIC does not know how the amount of reported modifications to borrowers experiencing financial difficulty will compare to the amount of TDRs that affected banks report.

In general, the FDIC expects that the initial amount of modifications made to borrowers experiencing financial difficulty will be lower than previously

[17] Generally speaking, entities that are U.S. Securities and Exchange Commission (SEC) filers, excluding smaller reporting companies as defined by the SEC, were required to adopt CECL beginning in January 2020. Most other entities are required to adopt CECL beginning in January 2023.

[18] *See* Financial Institution Letter (FIL) 17–2022, Consolidated Reports of Condition and Income for First Quarter 2022. *See also* Supplemental Instructions, March 2022 Call Report Materials, First 2022 Call, Number 299, available at *https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_FFIEC051_suppinst_202203.pdf.*

[19] FDIC Call Report data December 31, 2021.

reported TDRs. This is because under ASU 2022–02, reporting of modifications to borrowers experiencing financial difficulty should be applied prospectively and would therefore apply only to modifications made after a bank adopts the standard. However, in the long term it is possible that the amount of modifications to borrowers experiencing financial difficulty could be higher or lower than the amount of TDRs that banks would have reported prior to adoption of ASU 2022–02. Therefore, under the proposed rule, the underperforming assets ratio could be higher or lower due to the adoption of ASU 2022–02, and the resulting ratio may or may not affect an individual bank's assessment rate, depending on whether it is the binding ratio for the credit quality measure.

The FDIC does not have the information necessary to estimate the expected effects of the proposal to incorporate the new accounting standard into the large and highly complex bank scorecards. However, the following analysis illustrates a range of potential outcomes based on TDRs reported prior to ASU 2022–02, as the amount of modifications to borrowers experiencing financial difficulty could be higher, lower, or similar to previously reported TDRs. The analysis shows the effect on assessments of higher or lower TDRs in calculating the underperforming assets ratio for deposit insurance assessment purposes.

The FDIC calculated some illustrative examples of the effect on assessments if modifications made to borrowers experiencing financial difficulty are lower than certain amounts of previously reported TDRs. For example, if all large and highly complex banks had reported zero TDRs as of December 31, 2021, before FASB issued ASU 2022–02, the impact on the underperforming assets ratio would have reduced total deposit insurance assessment revenue by an annualized amount of approximately $90 million; if modifications were 50 percent lower than TDRs reported as of December 31, 2021, annualized assessments would have decreased by $52 million.

Alternatively, as an extreme and unlikely scenario, if all large and highly complex banks had reported zero TDRs during a period when overall risk in the banking industry was higher, such as December 31, 2011, the resulting underperforming assets ratio would have reduced total deposit insurance assessment revenue by an annualized amount of approximately $957 million. Between 2015 and 2019, if TDRs were zero, the resulting underperforming assets ratio would have reduced total deposit insurance assessment revenue by about $279 million annually, on average.

Over time, however, under ASU 2022–02 large and highly complex banks will begin to report modifications to borrowers experiencing financial difficulties. As noted above, the effect on assessments will depend on how the newly reported modifications compare to the TDRs that would have been reported under the prior accounting standard. For example, if all large and highly complex banks had reported modifications to borrowers experiencing financial difficulty that were 25 percent greater than the TDRs reported as of December 31, 2021, the impact on the underperforming assets ratio would have increased total deposit insurance assessment revenue by an annualized amount of approximately $30 million; if the modifications exceeded TDRs by 50 percent, annualized assessments would have increased by $65 million; and if the modifications exceeded TDRs by 100 percent, annualized assessments would have increased by $137 million.

The analysis presented above serves as an illustrative example of potential effects of the proposed rule. The analysis does not estimate potential future modifications to borrowers experiencing financial difficulty or how those amounts, once reported, will compare to previously reported TDRs for a few reasons. First, banks were granted temporary relief from reporting TDRs that were modified due to the COVID–19 pandemic, so recent reporting of TDRs is likely lower than it may otherwise have been.[20] Second, the amount of modifications or restructurings made by large or highly complex banks vary based on economic conditions and future economic conditions are uncertain. Third, a restructuring of a debt constitutes a TDR if the creditor for economic or legal reasons related to the debtor's financial difficulties grants a concession to the debtor that it would not otherwise consider, while a modification to borrowers experiencing financial difficulty is not evaluated based on whether or not a concession has been granted. Finally, future Call Report revisions and instructions on how modifications to borrowers experiencing financial difficulties should be reported will affect the future reported amount of modifications to borrowers experiencing financial difficulty.

With regard to the higher-risk assets ratio, the effect on assessments paid by large and highly complex banks is likely to be more muted. The assessment regulations define a higher-risk C&I or consumer loan as a loan or refinance that meets certain risk criteria. The proposed rule would exclude modifications to borrowers experiencing financial difficulty from the definition of a refinance for purposes of the higher-risk assets ratio. As a result, if a modification to a C&I or consumer loan results in the classification of the loan as a TDR, under the current regulations, or as a modification to borrowers experiencing financial difficulty, under the proposed rule, a large or highly complex bank would not have to re-evaluate whether the modified loan meets the definition of a higher-risk asset. For example, if a higher-risk C&I loan was subsequently modified as a TDR or modification to borrowers experiencing financial difficulty, it would not be considered a refinance and, therefore, would continue to be considered a higher-risk asset. Conversely, if a C&I loan that does not meet the definition of a higher-risk asset was subsequently modified as a TDR or modification to borrowers experiencing financial difficulty, it would not be considered a refinance and, therefore, would not have to be re-evaluated to determine if it meets the definition of a higher-risk asset. The FDIC assumes that these possible outcomes are offsetting and the change to the rule will have minimal to no effect on deposit insurance assessments for large and highly complex banks.

The proposed rule would pose no additional reporting burden for large and highly complex banks.

Question 2: The FDIC invites comments on the expected effects of the proposal on large and highly complex institutions.

V. Alternatives Considered

The FDIC considered two reasonable and possible alternatives as described below. On balance, the FDIC believes the current proposal would determine deposit insurance assessment rates for large and highly complex banks in the most appropriate, accurate, and straightforward manner.

One alternative would be to require banks to continue to report TDRs specifically for deposit insurance

[20] On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law. Section 4013 of the CARES Act, ''Temporary Relief From Troubled Debt Restructurings,'' provided banks the option to temporarily suspend certain requirements under U.S. GAAP related to TDRs to account for the effects of COVID–19. Division N of the Consolidated Appropriations Act, 2021 (Title V, subtitle C, section 541) was signed into law on December 27, 2020, extending the provisions in Section 4013 of the CARES Act to January 1, 2022. This relief applied to certain loans modified between March 1, 2020 and January 1, 2022.

assessment purposes, even after they have adopted CECL and ASU 2022–02. This alternative would maintain consistency of the data used in the underperforming assets ratio and higher-risk assets ratio with prior reporting periods. However, this alternative would impose additional reporting burden on large and highly complex banks. This alternative would also fail to recognize the potential usefulness of the new data on modifications to borrowers experiencing financial difficulty. Ultimately, the FDIC does not believe any benefits from continued reporting of TDRs expressly for assessment purposes would justify the cost to affected banks.

The FDIC also considered a second alternative: removing restructured loans from the definition of underperforming assets entirely and not incorporating the new data on modifications to borrowers experiencing financial difficulty. Similar to the first alternative, this second alternative would apply uniformly to all large and highly complex banks, regardless of their early adoption status. However, this alternative fails to recognize that data on modifications to borrowers experiencing financial difficulty provide a meaningful indicator of credit risk throughout economic cycles and should be captured in credit quality measures such as the underperforming assets ratio and the higher-risk assets ratio. The FDIC believes that the new modifications data required under ASU 2022–02 can provide valuable information and would not impose additional reporting burden. Incorporating this new data in place of TDRs would be the most reasonable option to ensure that large and highly complex banks are assessed fairly and accurately, all else equal.

Question 3: The FDIC invites comment on the reasonable and possible alternatives described in this proposed rule. Are there other reasonable and possible alternatives that the FDIC should consider?

VI. Comment Period, Effective Date, and Application Date

The FDIC is issuing this proposal with a 30-day comment period. Following the comment period, the FDIC expects to issue a final rule with an effective date of January 1, 2023, and applicable to the first quarterly assessment period of 2023 (*i.e.,* January 1–April 1, 2023). Most institutions that have implemented CECL, will adopt FASB's ASU 2022–02 in 2023, unless an institution chooses to early adopt in 2022. Institutions (those with a calendar year fiscal year) implementing CECL on January 1, 2023, will also adopt, FASB's ASU 2022–02 at that time. Therefore, by the first quarter of 2023, ASU 2022–02 also will be in effect for most, if not all, large and highly complex banks. The FDIC believes that coordinating the assessment system amendments to conform to the new accounting standards will promote a more efficient transition and will result in affected banks reporting their data in a consistent manner based on the correct accounting concepts.

VII. Request for Comment

The FDIC is requesting comment on all aspects of the notice of proposed rulemaking, in addition to the specific requests for comment above.

VIII. Administrative Law Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[21] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $750 million.[22] Certain types of rules, such as rules relating to rates, corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of ''rule'' for purposes of the RFA.[23] Because the proposed rule relates directly to the rates imposed on IDIs for deposit insurance and to the deposit insurance assessment system that measures risk and determines each bank's assessment rate, the proposed rule is not subject to the RFA. Nonetheless, the FDIC is voluntarily presenting information in this RFA section.

Based on Call Report data as of December 31, 2021, the FDIC insures 4,848 IDIs, of which 3,478 are defined as small entities by the terms of the RFA.[24] The proposed rule, however, would apply only to institutions with $10 billion or greater in total assets which, by definition, do not meet the criteria to be considered small entities for the purposes of the RFA. Since no small entities would be affected by the proposed rule, the FDIC certifies that the proposed rule would not have a significant economic effect on a substantial number of small entities.

B. Riegle Community Development and Regulatory Improvement Act

Section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA) requires that the Federal banking agencies, including the FDIC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on IDIs, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[25] In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.[26]

The proposed rule would not impose additional reporting, disclosure, or other new requirements on insured depository institutions, including small depository institutions, or on the customers of depository institutions. Accordingly, section 302 of RCDRIA does not apply. Nevertheless, the requirements of RCDRIA have been considered in setting the proposed effective date. The FDIC invites comments that will further inform its consideration of RCDRIA.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays

[21] 5 U.S.C. 601 *et seq.*

[22] The SBA defines a small banking organization as having $750 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 87 FR 18627, effective May 2, 2022). In its determination, the SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates. *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[23] 5 U.S.C. 601.

[24] FDIC Call Report data, December 31, 2021.

[25] 12 U.S.C. 4802(a).

[26] 12 U.S.C. 4802(b).

a currently valid Office of Management and Budget (OMB) control number.[27] The FDIC's OMB control numbers for its assessment regulations are 3064–0057, 3064–0151, and 3064–0179. The proposed rule does not revise any of these existing assessment information collections pursuant to the PRA and consequently, no submissions in connection with these OMB control numbers will be made to the OMB for review. However, the proposed rule affects the agencies' current information collections for the Call Report (FFIEC 031 and FFIEC 041, but not FFIEC 051). The agencies' OMB control numbers for the Call Reports are: OCC OMB No. 1557–0081; Board OMB No. 7100–0036; and FDIC OMB No. 3064–0052. Proposed changes to the Call Report forms and instructions will be addressed in a separate **Federal Register** notice.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[28] requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the **Federal Register** after January 1, 2000. The FDIC invites your comments on how to make this proposed rule easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could the material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be stated more clearly?
- Does the proposed regulation contain language or jargon that is unclear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand?

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, Banking, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR part 327 as follows:

PART 327—ASSESSMENTS

■ 1. The authority for 12 CFR part 327 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817–19, 1821.

■ 2. Amend appendix A to subpart A in section IV, as proposed to be redesignated on July 1, 2022, at 87 FR 39409, by:

■ a. In the entries for ''Balance Sheet Liquidity Ratio'', ''Potential Losses/ Total Domestic Deposits (Loss Severity Measure)'', and ''Market Risk Measure for Highly Complex Institutions'', redesignating footnotes 5, 6, and 7 as footnotes 6, 7, and 8, respectively;

■ b. Redesignating footnotes 5, 6, and 7 as footnotes 6, 7, and 8 at the end of the table;

■ c. Revising the entry for ''Credit Quality Measure''; and

■ d. Adding a new footnote 5 at the end of the table.

The revision and addition read as follows:

Appendix A to Subpart A of Part 327—Method To Derive Pricing Multipliers and Uniform Amount

* * * * *

VI. Description of Scorecard Measures

Scorecard measures [1]	Description
* * * * * * *	
Credit Quality Measure	The credit quality score is the higher of the following two scores:
(1) Criticized and Classified Items/ Tier 1 Capital and Reserves [2].	Sum of criticized and classified items divided by the sum of Tier 1 capital and reserves. Criticized and classified items include items an institution or its primary Federal regulator have graded ''Special Mention'' or worse and include retail items under Uniform Retail Classification Guidelines, securities, funded and unfunded loans, other real estate owned (ORE), other assets, and marked-to-market counterparty positions, less credit valuation adjustments.[4] Criticized and classified items exclude loans and securities in trading books, and the amount recoverable from the U.S. Government, its agencies, or Government-sponsored enterprises, under guarantee or insurance provisions.
(2) Underperforming Assets/Tier 1 Capital and Reserves [2].	Sum of loans that are 30 days or more past due and still accruing interest, nonaccrual loans, restructured loans [5] (including restructured 1–4 family loans), and ORE, excluding the maximum amount recoverable from the U.S. Government, its agencies, or government-sponsored enterprises, under guarantee or insurance provisions, divided by a sum of Tier 1 capital and reserves.
* * * * * * *	

[1] The FDIC retains the flexibility, as part of the risk-based assessment system, without the necessity of additional notice-and-comment rulemaking, to update the minimum and maximum cutoff values for all measures used in the scorecard. The FDIC may update the minimum and maximum cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio in order to maintain an approximately similar distribution of higher-risk assets to Tier 1 capital and reserves ratio scores as reported prior to April 1, 2013, or to avoid changing the overall amount of assessment revenue collected. 76 FR 10672, 10700 (February 25, 2011). The FDIC will review changes in the distribution of the higher-risk assets to Tier 1 capital and reserves ratio scores and the resulting effect on total assessments and risk differentiation between banks when determining changes to the cutoffs. The FDIC may update the cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio more frequently than annually. The FDIC will provide banks with a minimum one quarter advance notice of changes in the cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio with their quarterly deposit insurance invoice.

[2] The applicable portions of the current expected credit loss methodology (CECL) transitional amounts attributable to the allowance for credit losses on loans and leases held for investment and added to retained earnings for regulatory capital purposes pursuant to the regulatory capital regulations, as they may be amended from time to time (12 CFR part 3, 12 CFR part 217, 12 CFR part 324, 85 FR 61577 (Sept. 30, 2020), and 84 FR 4222 (Feb. 14, 2019)), will be removed from the sum of Tier 1 capital and reserves.

* * * * * * *

[27] 44 U.S.C. 3501–3521.

[28] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

[4] A marked-to-market counterparty position is equal to the sum of the net marked-to-market derivative exposures for each counterparty. The net marked-to-market derivative exposure equals the sum of all positive marked-to-market exposures net of legally enforceable netting provisions and net of all collateral held under a legally enforceable CSA plus any exposure where excess collateral has been posted to the counterparty. For purposes of the Criticized and Classified Items/Tier 1 Capital and Reserves definition a marked-to-market counterparty position less any credit valuation adjustment can never be less than zero.

[5] Restructured loans include troubled debt restructurings and modifications to borrowers experiencing financial difficulty, as these terms are defined in the glossary to the Call Report, as they may be amended from time to time.

* * * * *

■ 3. Amend appendix C to subpart A by:
■ a. In section I.A.2., under the heading ''Definitions'', revising the entry for ''Refinance''; and
■ b. In section I.A.3., revising the ''Refinance'' section preceding section I.A.4.

The revisions read as follows:

Appendix C to Subpart A of Part 327—Description of Concentration Measures

I. * * *

A. * * *

2. * * *

Definitions

* * * * *

Refinance

For purposes of a C&I loan, a refinance includes:

(a) Replacing an original obligation by a new or modified obligation or loan agreement;

(b) Increasing the master commitment of the line of credit (but not adjusting sub-limits under the master commitment);

(c) Disbursing additional money other than amounts already committed to the borrower;

(d) Extending the legal maturity date;

(e) Rescheduling principal or interest payments to create or increase a balloon payment;

(f) Releasing a substantial amount of collateral;

(g) Consolidating multiple existing obligations; or

(h) Increasing or decreasing the interest rate.

A refinance of a C&I loan does not include a modification or series of modifications to a commercial loan other than as described above or modifications to a commercial loan that would otherwise meet this definition of refinance, but that result in the classification of a loan as a troubled debt restructuring (TDR) or a modification to borrowers experiencing financial difficulty, as these terms are defined in the glossary of the Call Report instructions, as they may be amended from time to time.

* * * * *

3. * * *

Refinance

For purposes of higher-risk consumer loans, a refinance includes:

(a) Extending new credit or additional funds on an existing loan;

(b) Replacing an existing loan with a new or modified obligation;

(c) Consolidating multiple existing obligations;

(d) Disbursing additional funds to the borrower. Additional funds include a material disbursement of additional funds or, with respect to a line of credit, a material increase in the amount of the line of credit, but not a disbursement, draw, or the writing of convenience checks within the original limits of the line of credit. A material increase in the amount of a line of credit is defined as a 10 percent or greater increase in the quarter-end line of credit limit; however, a temporary increase in a credit card line of credit is not a material increase;

(e) Increasing or decreasing the interest rate (except as noted herein for credit card loans); or

(f) Rescheduling principal or interest payments to create or increase a balloon payment or extend the legal maturity date of the loan by more than six months.

A refinance for this purpose does not include:

(a) A re-aging, defined as returning a delinquent, open-end account to current status without collecting the total amount of principal, interest, and fees that are contractually due, provided:

(i) The re-aging is part of a program that, at a minimum, adheres to the re-aging guidelines recommended in the interagency approved Uniform Retail Credit Classification and Account Management Policy; [12]

(ii) The program has clearly defined policy guidelines and parameters for re-aging, as well as internal methods of ensuring the reasonableness of those guidelines and monitoring their effectiveness; and

(iii) The bank monitors both the number and dollar amount of re-aged accounts, collects and analyzes data to assess the performance of re-aged accounts, and determines the effect of re-aging practices on past due ratios;

(b) Modifications to a loan that would otherwise meet this definition of refinance, but result in the classification of a loan as a TDR or modification to borrowers experiencing financial difficulty;

(c) Any modification made to a consumer loan pursuant to a government program, such as the Home Affordable Modification Program or the Home Affordable Refinance Program;

(d) Deferrals under the Servicemembers Civil Relief Act;

(e) A contractual deferral of payments or change in interest rate that is consistent with the terms of the original loan agreement (*e.g.,* as allowed in some student loans);

(f) Except as provided above, a modification or series of modifications to a closed-end consumer loan;

(g) An advance of funds, an increase in the line of credit, or a change in the interest rate that is consistent with the terms of the loan agreement for an open-end or revolving line of credit (*e.g.,* credit cards or home equity lines of credit);

(h) For credit card loans:

(i) Replacing an existing card because the original is expiring, for security reasons, or because of a new technology or a new system;

(ii) Reissuing a credit card that has been temporarily suspended (as opposed to closed);

(iii) Temporarily increasing the line of credit;

(iv) Providing access to additional credit when a bank has internally approved a higher credit line than it has made available to the customer; or

(v) Changing the interest rate of a credit card line when mandated by law (such as in the case of the Credit CARD Act).

* * * * *

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on July 19, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–15763 Filed 7–26–22; 8:45 am]

BILLING CODE 6714–01–P

[12] Among other things, for a loan to be considered for re-aging, the following must be true: (1) The borrower must have demonstrated a renewed willingness and ability to repay the loan; (2) the loan must have existed for at least nine months; and (3) the borrower must have made at least three consecutive minimum monthly payments or the equivalent cumulative amount.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

[NCUA–2022–0099]

RIN 3133–AF47

Cyber Incident Notification Requirements for Federally Insured Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: Due to the increased frequency and severity of cyberattacks on the financial services sector, the NCUA Board is proposing to require a federally insured credit union that experiences a reportable cyber incident to report the incident to the NCUA as soon as possible and no later than 72 hours after the federally insured credit union reasonably believes that it has experienced a reportable cyber incident. This notification requirement provides an early alert to the NCUA and does not require credit unions to provide a

detailed incident assessment to the NCUA within the 72-hour time frame.

DATES: Comments must be received on or before September 26, 2022.

ADDRESSES: You may submit written comments, identified by RIN 3133–AF47, by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for NCUA–2022–0099.
- *Fax:* (703) 518–6319. Include ''[Your Name]—Comments on Proposed Rule: Cyber Incident Notification Requirements for Federally Insured Credit Unions'' in the transmittal.
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

Public Inspection: You may view all public comments on the Federal eRulemaking Portal at *https://www.regulations.gov* as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to COVID–19 safety measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA's law library is not currently available. After these safety measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: *Policy:* Christina Saari, Information Systems Officer, Office of Examination and Insurance, at (703) 283–0121; *Legal:* Gira Bose, Senior Staff Attorney, Office of General Counsel, at (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

Given the frequency and severity of cyber incidents within the financial services industry, the National Credit Union Administration Board (Board) believes it is important that the National Credit Union Administration (NCUA or agency) be notified of cyber incidents that disrupt a federally insured credit union's (FICU) operations, lead to unauthorized access to sensitive data, or disrupt members' access to accounts or services. In accordance with § 704.1(a) of the NCUA's rules and regulations, this proposed rule also applies to federally chartered corporate credit unions and federally insured, state-chartered corporate credit unions.

Cyberattacks reported to Federal law enforcement have increased in frequency and severity in recent years.[1] The financial services sector is one of the top U.S. critical infrastructure sectors targeted by ransomware.[2] Cyberattacks may use destructive malware or other malicious software to target weaknesses in the computers or networks of financial institutions, typically with malicious intent.

Some cyberattacks have the potential to alter, delete, or otherwise render a credit union's data and systems unusable. Examples include a large-scale distributed denial of service (DDoS) attack that disrupts member account access, a computer hacking incident that disables business operations, or a data breach that exposes sensitive data. Depending on the scope of a cyber incident, a credit union's data and system backups may also be affected which can severely affect the ability of the credit union to recover operations. Cyber incidents can result from destructive malware or malicious software (cyberattacks), as well as non-malicious failure of hardware or software, personnel errors, and other causes.

A FICU experiencing a cyber incident is encouraged to contact relevant law enforcement or security agencies, as appropriate, after the incident occurs. Furthermore, providing information on cyber intrusions or other cyber incidents to the NCUA, the Federal Bureau of Investigation, and the Cybersecurity and Infrastructure Security Agency (CISA)[3] provides the U.S. Government with information that can be used to identify new cyber-related adversarial tactics, techniques, and procedures, as well as information on industry sectors that are being targeted. This leads to greater visibility and an ability for the U.S. Government to issue cybersecurity alerts, advise software and equipment manufacturers of critical vulnerabilities, and prosecute offenders.

[1] *See* Federal Bureau of Investigation, internet Crime Complaint Center, 2021 internet Crime Report, citing a seven-percent increase in complaints of suspected internet crime with the top three cyber-crimes reported by victims being phishing scams, non-payment/non-delivery scams, and personal data breach, *available at https://www.ic3.gov/Media/PDF/AnnualReport/2021_IC3Report.pdf.*

[2] *Id.* at 15.

[3] CISA, Department of Homeland Security—Fact Sheet. *See https://www.cisa.gov/sites/default/files/publications/CISA-Factsheet_16-Dec-2021-V4_508.pdf.*

II. Proposed Rule

The NCUA Board is issuing this notice of proposed rulemaking (proposal or proposed rule) to require a FICU to provide the NCUA with prompt notification of any *cyber incident* that rises to the level of a *reportable cyber incident.* The proposed rule would require such notification as soon as possible but no later than 72 hours after a FICU reasonably believes that a *reportable cyber incident* has occurred.[4]

The proposed rule defines *cyber incident* as an occurrence that actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information on an information system or actually or imminently jeopardizes, without lawful authority, an information system.[5]

The proposed rule defines a *reportable cyber incident* as any substantial cyber incident that leads to one or more of the following: A substantial loss of confidentiality,[6] integrity,[7] or availability of a network or member information system[8] that results from the unauthorized access to or exposure of sensitive data,[9] disrupts[10] vital member services,[11] or

[4] The Cyber Incident Reporting for Critical Infrastructure Act of 2022, part of the Consolidated Appropriations Act of 2022, will require a covered entity to report a covered cyber incident to CISA not later than 72 hours after the entity reasonably believes that the covered cyber incident has occurred. Consolidated Appropriations Act of 2022, Division Y, Public Law 117–103 (Mar. 15, 2022), *available at https://www.congress.gov/bill/117th-congress/house-bill/2471/text.*

[5] 6 U.S.C. 659(a)(5).

[6] *Confidentiality* means preserving authorized restrictions on information access and disclosure, including means for protecting personal privacy and proprietary information. *See https://csrc.nist.gov/glossary/term/confidentiality.* The agency is proposing to use definitions from the National Institute of Standards and Technology (NIST) as appropriate. NIST is a familiar and trusted source in the cybersecurity arena and is routinely cited by the Federal Financial Institutions Examination Council and individual Federal agencies.

[7] *Integrity* means guarding against improper information modification or destruction and includes ensuring information non-repudiation and authenticity. *See https://csrc.nist.gov/glossary/term/integrity.*

[8] *Member information system* means any method used to access, collect, store, use, transmit, protect, or dispose of member information. 12 CFR part 748, appendix A, section I.B.2.*e.*

[9] The NCUA proposes to define *sensitive data* as any information which by itself, or in combination with other information, could be used to cause harm to a credit union or credit union member and any information concerning a person or the person's account which is not public information, including any non-public personally identifiable information.

[10] A *disruption* is an unplanned event that causes an information system to be inoperable for a length of time. *https://csrc.nist.gov/glossary/term/disruption.*

[11] *Vital member services* means informational account inquiries, share withdrawals and deposits,

has a serious impact on the safety and resiliency of operational systems and processes; a disruption of business operations, vital member services, or a member information system resulting from a cyberattack [12] or exploitation of vulnerabilities; and/or a disruption of business operations or unauthorized access to sensitive data facilitated through, or caused by, a compromise [13] of a credit union service organization, cloud service provider, managed service provider, or other third-party data hosting provider or by a supply chain compromise. The definition excludes any event where the cyber incident is performed in good faith by an entity in response to a specific request by the owner or operator of the information system.

The proposed definition of *reportable cyber incident* is intended to capture the reporting of substantial cyber incidents. What a FICU would consider to be *substantial* will likely depend on a variety of factors, including the size of the FICU, the type and impact of the loss, and its duration, for example. The agency expects a FICU to exercise reasonable judgment in determining whether it has experienced a substantial cyber incident that would be reportable to the agency. Under this proposal, if a FICU is unsure as to whether a cyber incident is reportable, the Board encourages the FICU to contact the agency.

The first prong of the *reportable cyber incident* definition would require a FICU to report a cyber incident that leads to a substantial loss of confidentiality, integrity, or availability of a member information system as a result of the exposure of sensitive data, disruption of vital member services, or that has a serious impact on the safety and resiliency of operational systems and processes. For example, if a FICU becomes aware that a substantial level of sensitive data is unlawfully accessed, modified, or destroyed, or if the integrity of a network or member information system is compromised, the cyber incident is reportable. If the credit union becomes aware that a member information system has been unlawfully modified and/or sensitive data has been left exposed to an unauthorized person, process, or device, that cyber incident is also reportable, irrespective of intent.

There are many technological reasons why services may not be available at any given time as, for example, computer servers are offline or systems are being updated. Such events are routine and thus would not be reportable to the NCUA. Only a cyber incident that leads to a substantial loss of confidentiality, integrity, or availability would be reportable to the agency.

The second prong of the *reportable cyber incident* definition would require reporting to the NCUA in the event of a cyberattack that leads to a disruption of business operations, vital member services, or a member information system. Cyberattacks that cause disruption to a FICU's business operations, vital member services, or a member information system must be reported to the NCUA within 72 hours of a FICU's reasonable belief that it has experienced a cyberattack. For example, a DDoS attack that disrupts member account access would be reportable under this prong. Blocked phishing attempts, failed attempts to gain access to systems, or unsuccessful malware attacks would not be reportable.

The third prong of the *reportable cyber incident* definition would require a FICU to notify the agency either when a third-party service provider has informed a FICU that the FICU's sensitive data or business operations have been compromised as a result of a cyber incident experienced by the third-party service provider or upon the FICU forming a reasonable belief this has occurred, whichever occurs sooner.

Credit unions are increasingly using third parties to provide technological services, including information security and mobile and online banking. These third-party systems and servers also store a vast amount of FICU member data. A compromise of a third party's systems can be the result of an intentional cyberattack or an unintentional disclosure or loss of information. Considering the high degree of reliance by FICUs upon third parties, it is imperative that the NCUA be informed of any type of compromise to a third party's systems that places the credit union system at risk. Systemic risk from third-party vendors and credit union service organizations (CUSO) is a significant concern given that credit unions rely on many of the same third-party vendors.

As of March 30, 2022, the top five credit union core processing system third-party vendors provided service to credit unions holding approximately 87 percent of total credit union system assets. Likewise, at the end of 2021, the top five CUSOs provided service to credit unions that hold approximately 95 percent of total credit union system assets. Significant problems or a failure with a critical vendor or CUSO has the potential to result in disruption, including losses, to many credit unions and, in turn, pose risk to the National Credit Union Share Insurance Fund (NCUSIF) and national economic security given the amount and type of data held and processed, as well as the number of Americans who use credit unions for financial services. Thus, when a FICU is alerted to a cyber incident caused by a third party which impacts the FICU's sensitive data or business operations, the FICU must report the incident to the NCUA as soon as possible but no later than 72 hours after it was notified by the third party or within 72 hours of the FICU forming a reasonable belief that a reportable cyber incident has occurred, whichever is sooner.

Finally, a FICU would not be required to report an incident performed in good faith by an entity in response to a request by the owner or operator of the information system. An example of an incident excluded from reporting would be the contracting of a third party to conduct a penetration test.[14]

In addition to the preceding examples, the following is a non-exhaustive list of incidents that would be considered *reportable cyber incidents* under the proposed rule:

1. A computer hacking incident that disables a FICU's operations.

2. A ransom malware attack that encrypts a core banking system or backup data.

3. Third-party notification to a FICU that they have experienced a breach of a FICU employee's personally identifiable information (PII).

4. A detected, unauthorized intrusion into a network information system.

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and loan payments and disbursements. 12 CFR 749.1

[12] *Cyberattack* is an attack, via cyberspace, targeting an enterprise's use of cyberspace for the purpose of disrupting, disabling, destroying, or maliciously controlling a computing environment/infrastructure; or destroying the integrity of the data or stealing controlled information. *See https://csrc.nist.gov/glossary/term/Cyber_Attack#:~:text=An%20attack%2C%20via%20cyberspace%2C%20targeting%20an%20enterprise%E2%80%99s%20use,SP%201800-10B%20from%20NIST%20SP%20800-30%20Rev.%201.*

[13] A *compromise* is the unauthorized disclosure, modification, substitution, or use of sensitive data or the unauthorized modification of a security-related system, device, or process in order to gain unauthorized access. *See https://csrc.nist.gov/glossary/term/compromise#:~:text=Definition(s)%3A,an%20object%20may%20have%20occurred.*

[14] A penetration test is a test methodology in which assessors, typically working under specific constraints, attempt to circumvent or defeat the security features of a system. *See* Assessing Security and Privacy Controls in Information Systems and Organizations, NIST Special Publication 800–53A Revision 5 at 697. *Available at https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53Ar5.pdf.*

5. Discovery or identification of zero-day malware [15] in a network or information system.

6. Internal breach or data theft by an insider.

7. A systems compromise resulting from card skimming.

8. Sensitive data exfiltrated outside of the FICU or a contracted third party in an unauthorized manner, such as through a flash drive or online storage account.

The Board expects that FICUs would consider whether other cyber incidents they experience, beyond those listed above, constitute reportable cyber incidents for purposes of notifying the NCUA. Under this proposal, if a FICU is unsure as to whether a cyber incident is reportable, the Board encourages the FICU to contact the agency.

A cyber incident reporting requirement will help promote early awareness of emerging threats to FICUs and the broader financial system. This early awareness will help the NCUA react to these threats before they become systemic. This reporting requirement is intended to serve as an early alert to the agency and is not intended to include a lengthy assessment of the incident. The agency will require only certain basic information, to the extent it is known to the FICU at the time of reporting, such as:

- A basic description of the reportable cyber incident, including what functions were, or are reasonably believed to have been, affected.
- The estimated date range during which the reportable cyber incident took place.
- Where applicable, a description of the exploited vulnerabilities and the techniques used to perpetrate the reportable cyber incident.
- Any identifying or contact information of the actor(s) reasonably believed to be responsible.
- The impact to the FICU's operations.

The NCUA anticipates that further follow-up communications between the FICU and the agency will occur through the supervisory process, as necessary. As such, the proposed rule does not include any prescribed reporting forms or templates, which should minimize reporting burden.

The Board does not expect that a FICU would typically be able to come to a reasonable belief that a reportable cyber incident has occurred immediately upon becoming aware of a cyber incident. Rather, the Board anticipates that a FICU would take some time to form a reasonable belief that it has experienced a reportable cyber incident. The Board recognizes that a FICU may not be able to form a reasonable belief that a reportable cyber incident has occurred outside of normal business hours. Only once the FICU has formed a reasonable belief that it has experienced a reportable cyber incident would the requirement to report within 72 hours be triggered.

The Board recognizes that a FICU may be working expeditiously to resolve the reportable cyber incident at the time it would be expected to notify the agency. Thus, the Board believes 72 hours is a reasonable amount of time to notify the agency upon the occurrence of a reportable cyber incident, particularly because the notice would not need to include a lengthy assessment of the incident. The Board also recognizes that these situations can be fluid and that additional information or changes to previously reported information may become available after the initial report. The Board expects only that FICUs share general information about what is known at the time.

While the Board is proposing a 72-hour time frame, depending on the feedback received during the comment period and the agency's analysis of the need for more prompt reporting, the final rule may provide a shorter time frame, such as 36 hours as the Federal banking agencies require.[16] Moreover, the notice could be provided to a designated point of contact at the agency via email or telephone or other similar method that the agency may prescribe through guidance. This notification, and any information provided by a FICU related to the incident, would be subject to the NCUA's confidentiality rules.[17]

Knowing about and responding to cyber incidents affecting FICUs is important to the NCUA's mission for a variety of reasons, including the following:

- The receipt of cyber incident information may give the NCUA earlier awareness of emerging threats to individual FICUs and, potentially, to the broader financial system.
- An incident may so severely impact a FICU that it can no longer support its members, and the incident could impact the safety and soundness of the FICU, leading to its failure. In these cases, the sooner the NCUA knows of the event, the better it can assess the extent of the threat and take appropriate action.
- An incident may substantially harm or inconvenience a FICU's members and undermine a FICU's consumer protection obligations. In these cases, the sooner the NCUA knows of the event, the sooner it can take appropriate action, including helping the FICU protect its members.
- Based on the NCUA's broad supervisory experience, it may be able to provide information and guidance to FICUs that may not have previously faced a particular type of cyber incident.
- The NCUA would be better able to conduct analyses across the credit union system to improve guidance, adjust supervisory programs, and provide information to the industry to help FICUs protect themselves.
- Receiving notice would enable the NCUA to facilitate requests from FICUs for assistance through the U.S. Treasury Office of Cybersecurity and Critical Infrastructure Protection.[18]

In March of this year, Congress enacted the Cyber Incident Reporting for Critical Infrastructure Act of 2022 (Cyber Incident Reporting Act or Act). That Act requires CISA to publish a final rule by September 2025 that will require covered entities, as will be defined in that rule, to report certain cyber incidents to CISA not later than 72 hours after their occurrence.[19] The Board believes that it would be imprudent in light of the increasing frequency and severity of cyber incidents to postpone a notification requirement until after CISA promulgates a final rule.

The Board is proposing to make two technical conforming amendments to appendix B to part 748 to reflect the changes proposed in this rule. The first amends the appendix's reference to the heading to part 748. The second amends a footnote reference to the filing

[15] Zero-day malware attack is a cyber-attack that exploits a previously unknown hardware, firmware, or software vulnerability. *See https://csrc.nist.gov/glossary/term/zero_day_attack.* This meets the first prong of a reportable cyber incident because there is a substantial loss of integrity of a network or member information system from unauthorized access.

[16] 86 FR 66424 (Apr. 1, 2022).

[17] 12 CFR part 792.

[18] The U.S. Treasury Office of Cybersecurity and Critical Infrastructure Protection coordinates with U.S. Government agencies to provide agreed-upon assistance to banking and other financial services sector organizations on cyber response and recovery efforts. These activities may include providing remote or in-person technical support to an organization experiencing a significant cyber-event to protect assets, mitigate vulnerabilities, recover and restore services, identify other entities at risk, and assess potential risk to the broader community. The Federal Financial Institutions Examination Council's Cybersecurity Resource Guide for Financial Institutions (Oct. 2018) identifies additional information available to banking organizations. *Available at https://www.ffiec.gov/press/pdf/FFIEC%20Cybersecurity%20Resource%20Guide%20for%20Financial%20Institutions.pdf.*

[19] Consolidated Appropriations Act of 2022, *supra* note 4.

requirements for Suspicious Activity Reports (SARs).

The Board believes this proposed rule is necessary because, as discussed below, current reporting requirements, while related to cyber incidents in some instances, are neither designed nor intended to provide timely information to the NCUA about such incidents.

III. Review of Existing Regulations and Guidance

The Board considered whether the information that would be provided under the proposed rule could be obtained through existing reporting standards. Currently, FICUs may be required to report certain instances of disruptive cyber-events and cyber-crimes by filing SARs.[20] In addition, FICUs should notify the appropriate NCUA Regional Director ''as soon as possible'' when they become aware ''of an incident involving unauthorized access to or use of sensitive member information.'' [21] FICUs are also required to notify the NCUA within five business days of any catastrophic act that occurs at their office(s).[22]

These reporting provisions can provide the NCUA with valuable insight into cyber-related events and information-security compromises; however, they do not provide the agency with sufficiently timely information about every substantial cyber incident that would be captured by the proposed rule.

Under the reporting requirements of the Bank Secrecy Act (BSA) and its implementing regulations, FICUs are required to file SARs when they detect a known or suspected criminal violation of Federal law or a suspicious transaction related to a money-laundering activity.[23] SARs, however, serve a different purpose from this proposed cyber notification requirement and do not require reporting of every incident captured by the proposed definition of a reportable cyber incident. Moreover, the 30-calendar-day reporting requirement under the BSA framework (with an additional 30 calendar days provided in certain circumstances) does not provide the agency with sufficiently timely notice of reported incidents.

Under the reporting guidelines set forth in appendix B of part 748, the NCUA's Guidance on Response Programs for Unauthorized Access to Member Information and Member Notice (Unauthorized Access Guidance), a FICU's procedures should include notifying the appropriate NCUA Regional Director or, in the case of state-chartered credit unions the appropriate state supervisory authority, as soon as possible when the credit union becomes aware of an incident involving unauthorized access to or use of sensitive member information.[24] While this may provide the agency with notice of some cyber incidents, this standard is too narrow in scope to address all relevant cyber incidents of which the NCUA needs to be notified. In particular, the Gramm-Leach-Bliley Act (GLBA) notification standard, on which the Unauthorized Access Guidance is based, does not include the reporting of incidents that disrupt operations or compromise sensitive credit union data but do not compromise sensitive member information.

At the same time, this proposed rule's definition of 'sensitive data' contains some overlap with the definition of 'member information' used in the Unauthorized Access Guidance. Thus, there may be instances where unauthorized access to or use of sensitive member information could trigger FICU reporting to the NCUA pursuant to the Unauthorized Access Guidance as well as reporting to the NCUA under this proposed rule. In such instances, the agency expects FICUs to use the reporting framework outlined in this proposed rule. Despite this potential for overlap in some instances, the agency continues to find the Unauthorized Access Guidance to be applicable and appropriate for complying with GLBA and part 748.

Finally, the NCUA regulations require a FICU to notify the appropriate NCUA Regional Director within five business days of any catastrophic act that occurs at its office(s). The NCUA regulations define a catastrophic act as ''any disaster, natural or otherwise, resulting in physical destruction or damage to the credit union or causing an interruption in vital member services, as defined in § 749.1 of this chapter, projected to last more than two consecutive business days.'' [25] In 2007, the NCUA amended the definition of *catastrophic act* ''to address concerns that relatively minor events could be construed to trigger the need to file a report and, also, clarifying the causal link between a disaster and an interruption in vital member services.'' [26] The Board believed these changes to be ''consistent with the usual and customary meaning of the word catastrophe.'' [27] Furthermore, ''[t]hese changes also reinforce the Board's view that the reporting requirement applies only to a disaster as opposed to a circumstance where physical damage or a business closing occurs but is not disaster-related.'' [28]

While natural disasters were the leading concern in the aftermath of hurricanes Katrina and Rita, the use of the phrasing ''any disaster, natural or otherwise'' in the definition of catastrophic act was meant to illustrate other events, such as a power grid failure or physical attack, for example, could have a similar impact on access to member services and vital records. While some cyber-events may fall within the § 748.1(b) definition of catastrophic act, the Board believes they are sufficiently distinguishable and distinct to warrant separate consideration. The Board further believes that the longstanding requirement that FICUs be given five business days to report catastrophic acts, as defined in § 748.1(b), is still appropriate.

IV. Legal Authority

The Board issues this proposed rule pursuant to its authority under the Federal Credit Union Act (FCUA). Section 209 of the FCUA is a plenary grant of regulatory authority to the Board to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all FICUs.[29] Section 206 of the FCUA requires the agency to impose corrective measures whenever, in the opinion of the Board, any FICU is engaged in or has engaged

[20] 12 CFR 748.1(c).

[21] 12 CFR 748, appendix B, section II.A.1.b.

[22] 12 CFR 748.1(b).

[23] *See, e.g.,* 31 U.S.C. 5311 *et seq.;* 31 CFR subtitle B, chapter X; 12 CFR 748.1(c).

[24] 12 CFR part 748, appendix B, section II.A.1b., interpreting the Gramm-Leach-Bliley Act, 15 U.S.C. 6801(b).

[25] 12 CFR 748.1(b). *See also* 12 CFR part 749, appendix B, Catastrophic Act Preparedness Guidelines. The NCUA has long required catastrophic act reporting. In 1970, Congress amended the Federal Credit Union Act (FCUA) to require that the NCUA promulgate rules establishing minimum standards for the installation, maintenance, and operation of security devices and procedures to discourage robberies, burglaries, and larcenies. The 1970 amendment to the FCUA also required the agency to adopt time limits for compliance and mandated the submission of periodic reports. *See* 12 U.S.C. 1785(e) (Pub. L. 91–468) (84 Stat. 1002). Thus, since 1971, the NCUA has promulgated regulations requiring the submission of reports within five working days of an occurrence, or attempted occurrence, of a crime or catastrophic act. *See* 36 FR 10940 (June 1, 1971). *See also* 47 FR 17981 (Apr. 27, 1982); 50 FR 53295 (Dec. 31, 1985). In 1996, the NCUA and the Federal banking agencies, working with the U.S. Treasury's Financial Crimes Enforcement Network, replaced the crime reporting requirement, or ''Criminal Referral Form'' as it was known, with a new, more simplified ''Suspicious Activity Report'' for reporting known or suspected Federal criminal law violations and suspicious currency transactions. *See* 61 FR 11527 (Mar. 21, 1996).

[26] 72 FR 42271 (Aug. 2, 2007).

[27] *Id.*

[28] *Id.*

[29] 12 U.S.C. 1789(a)(11).

in unsafe or unsound practices in conducting its business.[30] Accordingly, the FCUA grants the Board broad rulemaking authority to ensure that the credit union industry and the NCUSIF remain safe and sound.

V. Request for Comments

The Board may amend the final rule based on comments received in response to this proposed rule. The Board seeks comment on all parts of the proposed rule, including the following:

1. The concepts used in the definition of *reportable cyber incident* are as defined currently in the NCUA regulations or as defined by the National Institute of Standards and Technology. Are these appropriate concepts and definitions to use? If not, please explain your reasoning and how the proposed definition of *reportable cyber incident* should be modified.

2. The proposed definition of *reportable cyber incident* would require a FICU to notify the NCUA in the event of a substantial cyber incident or cyberattack. What, if any, challenges would a FICU experience in concluding that it has experienced a cyberattack after determining it has experienced a reportable cyber incident? Would including a definition of *substantial* help a FICU in determining if it experienced a reportable cyber incident? If so, how would you define substantial?

3. The proposed definition of *reportable cyber incident* would require FICUs to notify the NCUA in the event of a third-party compromise that impacts the FICU's data or operations. In your experience, how do third parties with which FICUs contract currently provide notice when such incidents occur?

4. The Federal banking agencies recently promulgated a rule that requires banking organizations to report certain computer-security incidents to their regulators within 36 hours.[31] After the Federal banking agencies' rule was finalized, Congress enacted the Cyber Incident Reporting Act, which contains a 72-hour reporting window. Should the NCUA adopt a 72-hour reporting window, as proposed, or 36 hours as the Federal banking agencies adopted, or is a different time frame warranted? If a different time frame, please explain what that would be and why?

5. How should FICUs notify the NCUA when faced with a reportable cyber incident? Are email and telephone the best methods as suggested in the proposal? Should the NCUA adopt a single method of cyber incident reporting? Should the NCUA adopt a single point of contact in its Central Office or should FICUs report to their respective NCUA regional offices?

6. The Cyber Incident Reporting Act requires CISA to establish separate reporting requirements for ransomware attacks. The Act defines a ransomware attack as an incident that includes the use or threat of use of unauthorized or malicious code on an information system, or the use or threat of use of another digital mechanism, such as a denial-of-service attack, to interrupt or disrupt the operations of an information system or compromise the confidentiality, availability, or integrity of electronic data stored on, processed by, or transiting an information system, to extort a demand for a ransom payment. The reporting window for these types of incidents is 24 hours. Should the NCUA incorporate a similar reporting requirement of 24 hours specifically for ransomware attacks?

7. In addition to those referenced in the proposed rule, are there any other existing regulatory provisions that should be amended or clarified as a result of the proposed cyber-incident reporting requirement? For example, should § 748.1(b) on catastrophic act reporting be amended to include a requirement to report unplanned systemic outages of technological assets and critical networks, computer assets, systems, data, devices, or applications used to deliver vital electronic services to credit union members, not related to cyber incidents, that last more than two consecutive business days? For example, should the definition of vital member services be updated to reflect changes in how vital services are delivered to members to include reliance on the use of electronic banking systems and/or mobile banking applications to access and conduct transactions on their share, deposit, or loan accounts?

8. Is further clarification needed about any potential overlap between this proposed rule's reporting requirement in the event of unauthorized access to or exposure of sensitive data and the reporting of unauthorized access to member information conducted under the Unauthorized Access Guidance? If so, please provide specific concerns or issues that need to be addressed.

9. The NCUA invites comments on specific examples of incidents that should or should not constitute *reportable cyber incidents.* In addition to the examples listed in the proposal are there others the agency should consider?

VI. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include FICUs with assets less than $100 million) [32] and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. The proposed rule would require FICUs to notify the appropriate NCUA-designated point of contact of the occurrence of a reportable cyber incident via email, telephone, or other similar methods that the NCUA may prescribe. While this notice requirement is more than currently required under the agency's regulations, the proposed rule is not expected to create a significant cost burden for FICUs. The proposed rule requires a FICU only to provide the agency with notice in the event of a reportable cyber incident. The initial notice only includes limited details of what is known at the time and is not a full assessment or analysis of the incident. Accordingly, the NCUA certifies that the proposed rule will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new or amends existing information collection requirements.[33] For the purpose of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The proposed rule does contain information collection requirements that require approval by the Office of Management and Budget (OMB) under the PRA.[34] The proposed rule would require FICUs to notify the appropriate NCUA-designated point of contact of the occurrence of a reportable cyber incident via email, telephone, or other

[30] 12 U.S.C. 1786(b)(1). There are a number of references to ''safety and soundness'' in the FCUA. *See* 12 U.S.C. 1757(5)(A)(vi)(I), 1759(d & f), 1781(c)(2), 1782(a)(6)(B), 1786(b), 1786(e), 1786(f), 1786(g), 1786(k)(2), 1786(r), 1786(s), and 1790d(h).

[31] 86 FR 66424 (Apr. 1, 2022).

[32] NCUA Interpretive Ruling and Policy Statement 15–1, 80 FR 57512 (Sept. 24, 2015).

[33] 44 U.S.C. 3507(d); 5 CFR part 1320.

[34] 44 U.S.C. Chap. 35.

similar methods that the NCUA may prescribe.

The information collection requirements associated with 12 CFR part 748 are cleared under OMB control number 3133–0033 and provide for catastrophic act reporting and GLBA incident reporting guidance under appendix B to part 748. The proposed rule adds a cyber incident reporting under § 748.1(c) where FICUs would be required to report these incidents, as defined. The burden associated with the reporting requirements identified under appendix B will be removed because most reporting will now fall under the new cyber incident requirement. The NCUA estimates a one-hour annual reporting burden on each FICU, for a total of 4,903 hours.

Adjustment will also be made to the information collection requirements under part 748 to reflect a reduction in the current number of FICUs and to provide for a more accurate response rate per respondent.

OMB Number: 3133–0033.

Title: Security Program, 12 CFR part 748.

Type of Review: Revision of a currently approved collection.

Abstract: In accordance with Title V of GLBA, as implemented by 12 CFR part 748, FICUs are required to implement an information security program designed to protect member information. This information collection requires that such programs be designed to respond to incidents of unauthorized access or use, in order to prevent substantial harm or serious inconvenience to members. Part 748 sets forth the minimum requirements of a security program. It also addresses member notification, filing with the Financial Crimes Enforcement Network, and monitoring BSA compliance.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 4,903.

Estimated No. of Responses per Respondent: 19.

Estimated Total Annual Responses: 93,307.

Estimated Burden Hours per Response: 2.58.

Estimated Total Annual Burden Hours: 240,397.

The NCUA invites 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 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; and (e) estimates of capital or start-up costs and cost of operation, maintenance, and purchase of services to provide information.

All comments are a matter of public record. Interested persons are invited to submit written comments to (1) *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting the Agency under ''Currently under Review,'' and (2) Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; Fax No. 703–519–8579; or email at *PRAComments@ncua.gov.* Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the Executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[35]

List of Subjects in 12 CFR Part 748

Computer technology, Confidential business information, Credit unions, Internet, Personally identifiable information, Privacy, Reporting and recordkeeping requirements, Security measures.

[35] Public Law 105–277, 112 Stat. 2681 (1998).

Authority and Issuance

By the National Credit Union Administration Board on July 21, 2022.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons stated in the preamble, the NCUA Board proposes to amend 12 CFR part 748 as follows:

PART 748—SECURITY PROGRAM, SUSPICIOUS TRANSACTIONS, CATASTROPHIC ACTS, CYBER INCIDENTS, AND BANK SECRECY ACT COMPLIANCE

■ 1. The authority citation for part 748 is revised to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(b)(1), 1786(q), 1789(a)(11); 15 U.S.C. 6801–6809; 31 U.S.C. 5311 and 5318.

■ 2. Revise the heading for part 748 to read as set forth above.

■ 3. Amend § 748.1 as follows:

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

■ b. Add a new paragraph (c).

The addition reads as follows:

§ 748.1 Filing of reports.

* * * * *

(c) *Cyber incident report.* Each federally insured credit union must notify the appropriate NCUA-designated point of contact of the occurrence of a reportable cyber incident via email, telephone, or other similar methods that the NCUA may prescribe. The NCUA must receive this notification as soon as possible but no later than 72 hours after a federally insured credit union reasonably believes that it has experienced a reportable cyber incident or, if reporting pursuant to paragraph (c)(1)(i)(C) of this section, within 72 hours of being notified by a third party, whichever is sooner.

(1) *Reportable cyber incident.* (i) A reportable cyber incident is any substantial cyber incident that leads to one or more of the following:

(A) A substantial loss of confidentiality, integrity, or availability of a network or member information system as defined in appendix A, section I.B.2.*e.,* of this part that results from the unauthorized access to or exposure of sensitive data, disrupts vital member services as defined in § 749.1 of this chapter, or has a serious impact on the safety and resiliency of operational systems and processes.

(B) A disruption of business operations, vital member services, or a member information system resulting from a cyberattack or exploitation of vulnerabilities.

(C) A disruption of business operations or unauthorized access to

sensitive data facilitated through, or caused by, a compromise of a credit union service organization, cloud service provider, or other third-party data hosting provider or by a supply chain compromise.

(ii) A reportable cyber incident does not include any event where the cyber incident is performed in good faith by an entity in response to a specific request by the owner or operators of the system.

(2) *Definitions.* For purposes of this part:

Compromise means the unauthorized disclosure, modification, substitution, or use of sensitive data or the unauthorized modification of a security-related system, device, or process in order to gain unauthorized access.

Confidentiality means preserving authorized restrictions on information access and disclosure, including means for protecting personal privacy and proprietary information.

Cyber incident means an occurrence that actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information on an information system, or actually or imminently jeopardizes, without lawful authority, an information system.

Cyberattack means an attack, via cyberspace, targeting an enterprise's use of cyberspace for the purpose of disrupting, disabling, destroying, or maliciously controlling a computing environment/infrastructure; or destroying the integrity of the data or stealing controlled information.

Disruption means an unplanned event that causes an information system to be inoperable for a length of time.

Integrity means guarding against improper information modification or destruction and includes ensuring information non-repudiation and authenticity.

Sensitive data means any information which by itself, or in combination with other information, could be used to cause harm to a credit union or credit union member and any information concerning a person or their account which is not public information, including any non-public personally identifiable information.

* * * * *

■ 4. Amend appendix B to part 748 as follows:

■ a. Redesignate footnotes 29 through 42 as footnotes 1 through 14;

■ b. In the introductory text of section I:

■ i. Revise the first sentence; and

■ ii. Remove ''Part 748'' and add ''this part'' in its place; and

■ c. Revise newly redesignated footnotes 1 and 11.

The revisions read as follows:

Appendix B to Part 748—Guidance on Response Programs for Unauthorized Access to Member Information and Member Notice

I. * * *

This appendix provides guidance on NCUA's Security Program, Suspicious Transactions, Catastrophic Acts, Cyber Incidents, and Bank Secrecy Act Compliance regulation,[1] interprets section 501(b) of the Gramm-Leach-Bliley Act (''GLBA''), and describes response programs, including member notification procedures, that a federally insured credit union should develop and implement to address unauthorized access to or use of member information that could result in substantial harm or inconvenience to a member. * * *

* * * * *

[1] This part.

* * * * *

[11] A credit union's obligation to file a SAR is set forth in § 748.1(d).

* * * * *

[FR Doc. 2022–16013 Filed 7–26–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0891; Project Identifier AD–2022–00585–A,E,R]

RIN 2120–AA64

Airworthiness Directives; Various Airplanes, Helicopters, and Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for turbocharged, reciprocating engine-powered airplanes and helicopters and turbocharged, reciprocating engines with a certain v-band coupling installed. This proposed AD was prompted by multiple failures of spot-welded, multi-segment v-band couplings at the tailpipe to the turbocharger exhaust housing flange (also referred to as ''spot-welded, multi-segment exhaust tailpipe v-band coupling''). This proposed AD would establish a life limit for the spot-welded, multi-segment exhaust tailpipe v-band coupling and require repetitively inspecting the spot-welded, multi-segment exhaust tailpipe v-band coupling. 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 November 4, 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 *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.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0891; 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: Thomas Teplik, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 S. Airport Road, Wichita, KS 67209; phone: (316) 946–4196; email: *thomas.teplik@faa.gov* or *Wichita-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–2022–0891; Project Identifier AD–2022–00585–A,E,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 *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 Thomas Teplik, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 S. Airport Road, Wichita, KS 67209. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Since the mid-1970s, failures of v-band couplings that attach the exhaust tailpipe to the turbocharger exhaust outlet have resulted in a significant number of incidents and accidents (fatal and non-fatal) on both airplanes and helicopters. Since 1974, National Transportation Safety Board (NTSB) accident and incident investigations have led to the issuance of 7 NTSB Safety Recommendations concerning exhaust systems and/or exhaust v-band couplings; 20 FAA ADs to address the unsafe condition with exhaust systems and/or exhaust v-band couplings; and 10 FAA Special Airworthiness Information Bulletins (SAIBs). Industry has also taken action to raise awareness of the concerns associated with v-band coupling failures.

NTSB Safety Recommendations Affecting V-Band Couplings

NTSB Safety recommendation	Description	Make/model
A–90–166	Exhaust system	Piper PA–32RT–300T, PA–32R–301T.
A–90–165	Exhaust system	Piper PA–32RT–300T, PA–32R–301T.
A–90–164	Exhaust system	Piper PA–32RT–300T, PA–32R–301T.
A–88–151	Exhaust system	Piper PA–32RT–300T.
A–88–150	Exhaust system	Piper PA–32RT–300T.
A–88–147	Exhaust system	Piper PA–32RT–300T.
A–74–099	V-band engine exhaust clamp failures	Textron (Cessna) turbocharged 300/400 series.

You may examine these NTSB Safety Recommendations in the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0891.

ADs on V-Band Couplings

AD	Make/model
AD 2018–06–11, Amendment 39–19231 (83 FR 13383, March 29, 2018).	Textron Aviation Inc. Model A36TC and B36TC airplanes, all serial numbers, equipped with a turbocharged engine; Textron Aviation Inc. Model S35, V35, V35A, and V35B airplanes, all serial numbers, equipped with the Continental TSIO–520–D engine with AiResearch turbocharger during manufacture; and Textron Aviation Inc. Model S35, V35, V35A, and V35B airplanes, all serial numbers, equipped with StandardAero Supplemental Type Certificate (STC) SA1035WE.
AD 2014–23–03, Amendment 39–18019 (79 FR 67340, November 13, 2014).	Piper Aircraft, Inc. Model PA–31P airplanes, serial numbers 31P–1 through 31P–80 and 31P–7300110 through 31P–7730012.
AD 2013–10–04, Amendment 39–17457 (78 FR 35110, June 12, 2013; corrected September 5, 2013, 78 FR 54561).	Piper Aircraft, Inc. Model PA–31, PA–31–325, and PA–31–350 airplanes, all serial numbers.
AD 2010–13–07, Amendment 39–16338 (75 FR 35619, June 23, 2010; corrected July 26, 2010, 75 FR 43397).	Piper Aircraft, Inc. Model PA–32R–301T airplanes, serial numbers 3257001 through 3257311; and Model PA–46–350P airplanes, serial numbers 4622001 through 4622200 and 4636001 through 4636341.
AD 2004–23–17, Amendment 39–13872 (69 FR 67809, November 22, 2004).	Mooney Airplane Company Inc. (currently Mooney International Corporation) Model M20M airplanes, serial numbers 27–0001 through 27–0321.
AD 2001–08–08, Amendment 39–12185 (66 FR 20192, April 20, 2001).	Raytheon Aircraft Company (previously The Beech Aircraft Corporation; currently Textron Aviation Inc.) Model 35–C33A, E33A, E33C, F33A, F33C, S35, V35, V35A, V35B, 36, and A36 airplanes, all serial numbers, with Tornado Alley Turbo, Inc. STC SA5223NM and STC SE5222NM incorporated and with a Teledyne Continental engine equipped with a turbonormalizing system.
AD 2000–11–04, Amendment 39–11752 (65 FR 34941, June 1, 2000).	Commander Aircraft Company Model 114TC airplanes, serial numbers 20001 through 20027.
AD 2000–01–16, Amendment 39–11514 (65 FR 2844, January 19, 2000).	Cessna Aircraft Company (currently Textron Aviation Inc.) Model T310P, T310Q, T310R, 320, 320A, 320B, 320C, 320D, 320E, 320F, 320–1, 335, 340, 340A, 321 (Navy OE–2), 401, 401A, 401B, 402, 402A, 402B, 402C, 404, 411, 411A, 414, 414A, 421, 421A, 421B, and 421C airplanes, all serial numbers.
AD 91–21–01 R1, Amendment 39–9470 (61 FR 29003, June 7, 1996; corrected September 6, 1996, 61 FR 47051).	Textron Lycoming Model TIO–540–S1AD reciprocating engines installed on, but not limited to, Piper Aircraft, Inc. PA–32 series airplanes.
AD 81–23–03 R2, Amendment 39–4491 (47 FR 51101, November 12, 1982).	Cessna (currently Textron Aviation Inc.) Model P210N airplanes, serial numbers P21000001 through P21000811

These ADs require v-band coupling replacements (life limit) and/or repetitive inspections, or changing the type design of the v-band coupling. This proposed AD would not apply to airplanes that have complied with one of these ADs. You may examine these ADs in the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0891.

SAIBs ON V-BAND COUPLINGS

SAIB	Subject
CE–18–21	Exhaust Turbochargers; Announce the availability of the ''Best Practices Guide for Maintaining Exhaust System Turbocharger to Tailpipe V-band Couplings/Clamps''.
CE–18–07	Exhaust Turbocharger; V-band Couplings Used in Engine Exhaust Systems on Turbocharged Reciprocating Engine Powered Aircraft.
CE–13–45	Engine Exhaust; Tailpipe V-band Couplings [for turbocharged, reciprocating engine-powered airplanes].
CE–13–07R1	Engine Exhaust; Tailpipe V-band Couplings [for Cessna Aircraft Company (currently Textron Aviation Inc.) Model T206H airplanes].
CE–13–07	Engine Exhaust; Tailpipe V-band Couplings [for Cessna Aircraft Company (currently Textron Aviation Inc.) Model T206H airplanes].
CE–10–33R1	Engine Exhaust [for reciprocating engine-powered airplanes].
CE–10–33	Engine Exhaust [for reciprocating engine-powered airplanes].
CE–09–11	Turbocharged Engines [for turbocharged engine-powered airplanes].
CE–05–13	Alternative method of compliance (AMOC) to AD 91–03–15, Amendment 39–6870 (56 FR 3025, January 28, 1991) for Mooney Aircraft Corporation Model M20M airplanes.
CE–04–22	Exhaust System Components for reciprocating engine-powered airplanes.
CE–03–46	Mooney Model M20M airplanes with turbocharged engines using v-band clamps

You may examine these SAIBs in the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0891.

In spite of these efforts, failures continue to occur and the number of significant safety events continues to increase. As a result, the General Aviation Joint Steering Committee (GA–JSC), which is comprised of both the FAA and industry, developed a working group to study v-band coupling failures associated with turbocharged reciprocating engine-powered aircraft and develop recommended corrective actions. This v-band coupling working group was comprised of aviation industry manufacturers, type/user groups, and government entities. The working group was tasked to examine the turbocharger to tailpipe interface and develop recommendations to enhance the safety of the fleet.

The working group recommended mandatory corrective actions that are tailored to each specific coupling type (spot-welded, riveted, or single piece), thereby minimizing the impact to owner/operators. The working group recommended a mandatory coupling replacement time (life limit) and annual inspection. The working group also recommended non-mandatory actions to aid and educate maintenance personnel in appropriate v-band coupling removal, installation, and inspection practices. Finally, the working group recommended actions for new designs, which incorporate lessons learned from review of the in-service fleet. For new designs incorporating a V-band coupling immediately downstream of the turbocharger exhaust discharge, the working group recommended that a replacement interval (500 hours for spot-welded and 2,000 hours for riveted and single-piece) be incorporated in the Airworthiness Limitations sections of the maintenance manual.

In January 2018, the working group published a final report titled ''Exhaust System Turbocharger to Tailpipe V-band Coupling/Clamp Working Group Final Report'' (final report). Appendix B of the final report contains the Best Practices Guide. The final report may be found in the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0891.

The final report concluded that the common denominator in the incidents and accidents reviewed is the spot-welded, multi-segment exhaust tailpipe v-band coupling (see Figure A). These couplings come in either two or three segment varieties. The segments are the number of v-retainer segments, which are attached to the outer band via spot welds. Although multi-segment exhaust tailpipe couplings can also be riveted, the riveted couplings do not create an unsafe condition.

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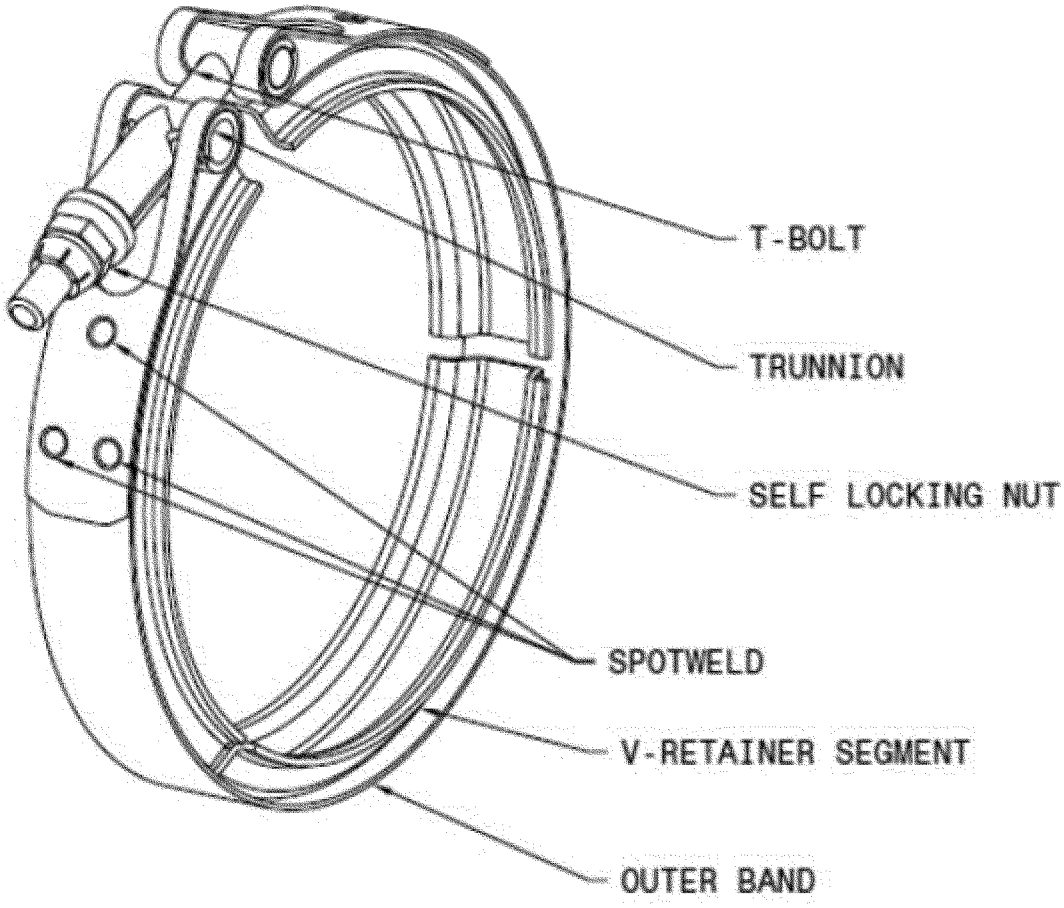

Figure A

Spot-welded, multi-segment exhaust tailpipe v-band coupling

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The majority of the events studied by the working group indicated fatigue failure of spot-welded, multi-segment exhaust tailpipe v-band couplings as a result of stress corrosion cracking that originated at or near a spot weld. This is the same unsafe condition identified in the other v-band coupling AD actions previously referenced. The data studied by the working group contained evidence of pre-existing cracking of the couplings, known embrittlement at the spot weld locations simply due to that manufacturing method, and outer band cupping on the multi-segment couplings (which is the result of age, over-use, and potential over-torqueing). The working group also found that many of the couplings had safety wire across the bolt end. The safety wire could be helpful if there was a bolt or nut failure (extremely rare events) or the nut was missing. However, the safety wire was of no value when the failure was transverse band cracking and total separation at the spot weld. The data studied by the working group indicated many accidents were due to v-band couplings that were of the multi-segment, spot-welded design, when used in a specific location (the tailpipe to the turbocharger exhaust housing flange on turbocharged reciprocating engine-powered aircraft).

After the working group published the final report, the FAA issued SAIB CE–18–21, dated July 13, 2018. This SAIB announced the availability of the Best Practices Guide from the final report and recommended the public apply the best practices in the maintenance of turbocharged reciprocating engine powered aircraft. The FAA also assessed the recommendations contained in the final report and determined an unsafe condition exists in turbocharged reciprocating engine-powered aircraft with a spot-welded, multi-segment v-band coupling installed. Because these v-band couplings are widely used by many design approval holders on various models (engines and aircraft), several Aircraft Certification Office Branches were involved in the decision to propose a single AD. The FAA also determined that the corrective actions recommended in the final report were appropriate to address this unsafe condition.

This condition, if not addressed, could lead to failure of the spot-welded, multi-segment exhaust tailpipe v-band coupling, leading to detachment of the exhaust tailpipe from the turbocharger and allowing high-temperature exhaust gases to enter the engine compartment. This could result in smoke in the cockpit, in-flight fire, and loss of control of the aircraft.

FAA's Determination

The FAA is issuing this NPRM after determining that 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 apply to all reciprocating turbocharged airplanes, helicopters, and reciprocating engines that have a spot-welded, multi-segment v-band coupling installed at the tailpipe to the turbocharger exhaust housing flange. The proposed AD would apply regardless of whether the turbocharger is installed as part of the type certificate or under an STC, parts manufacture approval, or field approval. The proposed AD would not apply to airplanes that have complied with certain ADs listed in paragraph (d) of the proposed AD.

This proposed AD would require the following actions:

- Repetitively inspecting the spot-welded, multi-segment exhaust tailpipe v-band couplings annually, regardless of the hours time-in-service (TIS) accumulated on the v-band coupling; and
- Establishing a life limit for the spot-welded, multi-segment exhaust tailpipe v-band couplings by removing them from service every 500 hours TIS.

As an alternative for the first time the spot-welded, multi-segment exhaust tailpipe v-band coupling must be removed from service due to the 500 hour life limit, this proposed AD would allow doing the repetitive inspections every 6 months or 100 hours TIS, whichever occurs first, for a period of 2 years, as long as the v-band coupling continues to pass all of the inspections.

Replacing a spot-welded, multi-segment exhaust tailpipe v-band coupling with a v-band of a different part number or type (riveted or single piece) would not be permitted, unless previously FAA-approved as part of the aircraft or engine type certificate, an STC, or an AMOC.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, could affect up to 41,058 airplanes, helicopters, and engines (products of U.S. registry). The FAA has no way of determining the number of these products that could have an affected spot-welded, multi-segment v-band coupling installed. The FAA's estimated cost on U.S. operators reflects the maximum possible cost based on the 41,058 products of U.S. registry. Based on this, the FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Number of U.S. products	Cost on U.S. operators
Aircraft records review	0.5 work hour × $85 = $42.50.	N/A	$42.50	41,058	$1,744,965.
Removal of the coupling from service and replacement (single-engine aircraft).	2 work-hours × $85 per hour = $170.	$400	$570	31,248	$17,811,360.
Removal of the couplings from service and replacement (twin-engine aircraft).	4 work-hours × $85 per hour = $340.	800	$1,140	9,810	$11,183,400.
Inspection of the coupling without removal (single-engine aircraft).	0.5 work-hour × $85 per hour = $42.50.	N/A	$42.50 per inspection cycle.	31,248	$1,328,040 per inspection cycle.
Inspection of the couplings without removal (twin-engine aircraft).	1 work-hour × $85 per hour = $85.	N/A	$85 per inspection cycle.	9,810	$833,850 per inspection cycle.

ON CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Inspection of the coupling, including removal and reinstallation (single-engine aircraft).	1.5 work-hours × $85 per hour = $127.50	N/A	$127.50
Inspection of the couplings, including removal and reinstallation (twin-engine aircraft).	3 work-hours × $85 per hour = $255	N/A	255

This proposed AD would provide operators the option of performing an inspection with the coupling removed from the aircraft instead of an inspection of the coupling without removing it from the aircraft. In some cases, an inspection with the coupling removed may be required.

A coupling may need to be removed from service before it reaches its 500-hour TIS life limit if it does not meet all of the inspection criteria at each inspection. The FAA has no way of determining the number of products that may need to remove the coupling from service before reaching its 500-hour TIS life limit.

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:

Various Airplanes, Helicopters, and Engines: Docket No. FAA–2022–0891; Project Identifier AD–2022–00585–A,E,R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 4, 2022.

(b) Affected ADs

None.

(c) Definitions

(1) For purposes of this AD, a ''v-band coupling'' means a spot-welded, multi-segment v-band coupling installed at the tailpipe to turbocharger exhaust housing flange.

(2) For purposes of this AD, ''new'' means zero hours time-in-service (TIS).

(d) Applicability

This AD applies to all turbocharged, reciprocating engine-powered airplanes and helicopters and turbocharged, reciprocating engines, certificated in any category, with a spot-welded, multi-segment v-band coupling installed at the tailpipe to turbocharger exhaust housing flange, except for airplanes that are in compliance with an AD listed in paragraphs (d)(1) through (10) of this AD. These v-band couplings are installed on, but not limited to, the products listed in Table 1 to paragraph (d) of this AD.

(1) AD 2018–06–11, Amendment 39–19231 (83 FR 13383, March 29, 2018).

(2) AD 2014–23–03, Amendment 39–18019 (79 FR 67340, November 13, 2014).

(3) AD 2013–10–04, Amendment 39–17457 (78 FR 35110, June 12, 2013; corrected September 5, 2013, 78 FR 54561).

(4) AD 2010–13–07, Amendment 39–16338 (75 FR 35619, June 23, 2010; corrected July 26, 2010, 75 FR 43397).

(5) AD 2004–23–17, Amendment 39–13872 (69 FR 67809, November 22, 2004).

(6) AD 2001–08–08, Amendment 39–12185 (66 FR 20192, April 20, 2001).

(7) AD 2000–11–04, Amendment 39–11752 (65 FR 34941, June 1, 2000).

(8) AD 2000–01–16, Amendment 39–11514 (65 FR 2844, January 19, 2000).

(9) AD 91–21–01 R1, Amendment 39–9470 (61 FR 29003, June 7, 1996; corrected September 6, 1996, 61 FR 47051).

(10) AD 81–23–03 R2, Amendment 39–4491 (47 FR 51101, November 12, 1982).

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Table 1 to Paragraph (d) – Applicability Includes, but is not Limited to, the Following Airplanes, Helicopters, and Engines When Turbocharged

Type Certificate Holder	Model
Aerostar Aircraft Corporation	PA-60-600 (Aerostar 600), PA-60-601 (Aerostar 601), PA-60-601P (Aerostar 601P), PA-60-602P (Aerostar 602P), and PA-60-700P (Aerostar 700P)
B-N Group Ltd. (formerly Pilatus Britten-Norman Limited)	BN-2, BN-2A, BN-2A-6, BN-2A-8, and BN-2A-9
Cirrus Design Corporation	SR22, SR22T
Commander Aircraft Corporation (formerly CPAC, Inc.; Commander Aircraft Company; Gulfstream Aerospace Corporation; Gulfstream American Corporation; and Rockwell International, Commander Aircraft Division)	112TC, 112TCA, and 114TC
Continental Aerospace Technologies, Inc. (formerly Continental Motors, Inc., and Teledyne Continental Motors)	LTSIO-360-E, LTSIO-360-EB, LTSIO-360-KB, LTSIO-360-RB; TSIO-360-E, TSIO-360-EB, TSIO-360-F, TSIO-360-FB, TSIO-360-KB, TSIO-360-LB, TSIO-360-MB, TSIO-360-RB, TSIO-360-SB; TSIO-520-BE, TSIO-520-L, TSIO-520-LB, TSIO-520-T, TSIO-520-WB; TSIO-550-A, TSIO-550-B, TSIO-550-C, TSIO-550-E, TSIO-550-G, TSIO-550-J, TSIO-550-K, TSIO-550-N; TSIOF-550-D, TSIOF-550-J, IO-520-B, IO-520-BA, IO-520-BB, IO-520-D, IO-550-B, IO-550-E, and IO-550-N
Costruzioni Aeronautiche Tecnam S.P.A.	P2012 Traveller
Daher Aerospace (formerly SOCATA and SOCATA - Groupe AEROSPATIALE)	TB 21
Diamond Aircraft Industries Inc. (formerly Diamond Aircraft Industries GmbH)	DA 40
The Enstrom Helicopter Corporation	F-28C, F-28C-2, F-28C-2R, F-28F, F-28F-R, 280C, 280F, and 280FX

Type Certificate Holder	Model
Helio Aircraft LLC	500
Helio Alaska, Inc.	H-295 (USAF U-10D) and H-395 (USAF L-28A or U-10B)
The King's Engineering Fellowship (formerly Evangel-Air)	4500-300 and 4500-300 Series II
Lycoming Engines (formerly Textron Lycoming)	IO-540-AA1A5, IO-540-AG1A5, IO-540-S1A5, TIO-540-AE2A, TIO-540-AH1A, TIO-540-J2BD, TO-360-C1A6D, TO-360-E1A6D, LTO-360-A1A6D, LTO-360-E1A6D, and LTIO-540-J2BD
Maule Aerospace Technology, Inc. (formerly Maule Aircraft Corporation)	M-5-210TC
Merlyn Products, Inc.	IO-540-MX1
Mooney International Corporation (formerly Mooney Aviation Company, Inc.; Mooney Airplane Company, Inc.; Mooney Aircraft Corporation; Aerostar Aircraft Corporation of Texas; and Mooney Aircraft Inc.)	M20J, M20K, M20M, M20TN, and M20V
Piper Aircraft, Inc. (formerly The New Piper Aircraft, Inc.)	PA-23, PA-23-160, PA-23-235, PA-23-250, PA-23-250 (Navy UO-1), PA-E23-250, PA-24-250, PA-24-260, PA-24-400, PA-28-201T, PA-28R-201T, PA-28RT-201T, PA-30, PA-31, PA-31-325, PA-31-350, PA-31P, PA-31P-350, PA-32-260, PA-32R-300, PA-32RT-300T, PA-32R-301(SP), PA-32-301T, PA-32R-301T, PA-34-200, PA-34-200T, PA-34-220T, PA-39, PA-44-180T, PA-46-310P, and PA-46-350P
Revo, Incorporated (formerly Global Amphibians, LLC; Consolidated Aeronautics, Inc.; Lake Aircraft Corporation; and Colonial Aircraft Company)	Lake Model LA-4, Lake Model LA-4A, Lake Model LA-4-200, and Lake Model 250
Scott's-Bell 47, Inc. (formerly Bell Helicopter Textron Inc.)	47G-3B, 47G-3B-1, 47G-3B-2, and 47G-3B-2A

Type Certificate Holder	**Model**
Siam Hiller Holdings, Inc. (formerly Rogerson Hiller Corporation; Hiller Helicopters; Rogerson Aircraft Corporation; Hiller Aviation; Heli-Parts, Inc.; Fairchild Industries, Inc.; and Hiller Aircraft Corporation)	UH-12L and UH-12L4
SST FLUGTECHNIK GmbH (formerly Extra Flugzeugproduktions- und Vertriebs- GmbH and Extra Flugzeugbau GmbH Flugplatz)	EA 400
Textron Aviation Inc. (formerly Beechcraft Corporation, Hawker Beechcraft Corporation, Raytheon Aircraft Company, and Beech Aircraft Corporation)	35-33, 35-A33, 35-B33, 35-C33, 35-C33A, E33, E33A, E33C, F33, F33A, F33C, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, 36, A36, A36TC, B36TC, D55, E55, 56TC (Turbo Baron), A56TC (Turbo Baron), 58, G58, 60 (Duke), A60 (Duke), B60 (Duke), 95, 95-C55, B95, B95A, D95A, and E95
Textron Aviation Inc. (formerly Cessna Aircraft Company)	185, 185A, 185B, 185C, 185D, 185E, A185E, A185F, A188, A188A, A188B, A188C, T182, T182T, TR182, T188C, 206, P206, P206A, P206B, P206C, P206D, P206E, T206H, TP206A, TP206B, TP206C, TP206D, TP206E, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, TU206G, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, T207, T207A, 210, 210A, 210B, 210C, 210-5 (205), 210-5A (205A), P210N, T210G, T210H, T210J, T210K, T210L, T210M, T210N, T240, T303, 310, 310B, 310C, 310D, 310E (USAF U-3B), 310F, 310G, 310H, 310I, 310J, T310P, T310Q, T310R, 320, 320A, 320B, 320C, 320D, 320E, 320F, 320-1, 321, 335, 340, 340A, LC40-550FG, LC41-550FG, LC42-550FG, FT337E, FT337F, FT337GP, FT337HP, P337H, T337B, T337C, T337D, T337E, T337F, T337G, T337H, T337H-SP, 401, 401A,

Type Certificate Holder	Model
	401B, 402, 402A, 402B, 402C, 404, 411, 411A, 414, 414A, 421, 421A, 421B, 421C
Triton Aerospace LLC (formerly Triton America LLC; AAI Acquisition, Inc.; and Adam Aircraft)	A500
Twin Commander Aircraft LLC (formerly Twin Commander Aircraft Corporation; Gulfstream Aerospace Corporation; Gulfstream American Corporation; Rockwell-Standard & Associates; and Aero Design and Engineering Company, also known as Aero Commander Aircraft)	500, 500A, 500B, 500S, 500U, 560A, 560E, and 685
Vulcanair S.p.A. (formerly Partenavia Costruzioni Aeronautiche S.p.A.)	P.68B, P.68C-TC, and P.68TC "Observer"

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(e) Subject

Joint Aircraft System Component (JASC) Code 8100, Exhaust Turbine System (Recip).

(f) Unsafe Condition

This AD was prompted by multiple failures of spot-welded, multi-segment v-band couplings installed at the tailpipe to turbocharger exhaust housing flange. The FAA is issuing this AD to prevent failure of the spot-welded, multi-segment exhaust tailpipe v-band coupling. The unsafe condition, if not addressed, could lead to detachment of the exhaust tailpipe from the turbocharger and allow high-temperature exhaust gases to enter the engine compartment. This could result in smoke in the cockpit, in-flight fire, and loss of control of the aircraft.

(g) Compliance

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

(h) Review of the Maintenance Records

Within 50 hours TIS after the effective date of this AD, review the aircraft maintenance records to determine the number of hours TIS accumulated on each v-band coupling.

(i) V-Band Coupling Life Limit

(1) Within the compliance times specified in paragraph (i)(1)(i) or (ii) or (i)(2) of this AD, remove the v-band coupling from service and install a new v-band coupling. Apply correct torque as necessary to the v-band coupling nut.

(i) If the v-band coupling has accumulated less than 500 hours TIS: Initially remove the v-band coupling from service before it accumulates 500 hours TIS or within 50 hours TIS after the effective date of this AD, whichever occurs later. Thereafter, remove the v-band coupling from service before it accumulates 500 hours TIS.

(ii) If the v-band coupling has accumulated 500 or more hours TIS or if the hours TIS of the v-band coupling cannot be determined: Initially remove the v-band coupling from service within 50 hours TIS after the effective date of this AD. Thereafter, remove the v-band coupling from service before it accumulates 500 hours TIS.

(2) As an alternative to initially removing the v-band coupling from service as required by paragraph (i)(1) of this AD, you may perform the inspections required by paragraphs (j)(1) through (7) or (k) of this AD. Do the initial inspections at the time the v-band coupling would have been removed from service and thereafter at intervals not to exceed 6 months or 100 hours TIS, whichever occurs first, for a period not to exceed 2 years after the effective date of this AD. If the v-band coupling fails to meet any inspection criteria in paragraphs (j)(1) through (7) or (k) of this AD, it must be removed from service before further flight.

Note 1 to paragraph (i): Instructions for installing a v-band coupling can be found in Appendix B: Best Practices Guide, paragraph 3.1, of the ''Exhaust System Turbocharger to Tailpipe V-band Coupling/Clamp Working Group Final Report,'' dated January 2018.

(j) Inspections Without Removal of the V-Band Coupling

At the next annual inspection after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first, and repetitively thereafter at intervals not to exceed 12 months, visually inspect the v-band coupling as required by paragraphs (j)(1) through (7) of this AD. Removing the v-band coupling from service and installing a new v-band coupling does not terminate the requirement to do these repetitive inspections.

(1) Inspect the v-band coupling and area around the v-band coupling for exhaust stains, sooting, and discoloration. If any of those conditions are found, remove the coupling and, instead of the inspections in paragraphs (j)(2) through (7) of this AD, do the inspections in paragraph (k) of this AD.

(2) Inspect the v-band coupling outer band for cracks, paying particular attention to the spot weld areas. If there is a crack, before further flight, remove the v-band coupling from service and install a new v-band coupling.

(3) Inspect the v-band coupling for looseness and for separation of the outer band from the v-retainer segments at all spot welds. If there is any looseness or separation of the outer band from any retainer segment, before further flight, remove the v-band coupling from service and install a new v-band coupling.

(4) Inspect the v-band coupling outer band for cupping, bowing, and crowning as depicted in figure 1 to paragraph (k)(1)(iii) of this AD. If there is any cupping, bowing, or crowning, before further flight, remove the coupling and, instead of the inspections in paragraphs (j)(5) through (7) of this AD, do the inspections in paragraph (k) of this AD.

(5) Inspect the area of the v-band coupling, including the outer band, opposite the t-bolt for damage and distortion. If there is any damage or distortion, before further flight, remove the v-band coupling from service and install a new v-band coupling.

(6) Using a mirror, inspect the v-band coupling to determine whether there is a space between the two v-retainer coupling segments next to the t-bolt. If there is no space between the two v-retainer coupling segments next to the t-bolt, before further

flight, remove the v-band coupling from service and install a new v-band coupling.

(7) Determine whether the v-band coupling nut is properly torqued and apply correct torque as necessary.

(k) Inspections With the Spot-Welded, Multi-Segment Exhaust Tailpipe V-Band Coupling Removed

(1) Remove the v-band coupling and do the inspections in paragraphs (k)(1) and (2) of this AD if required by paragraph (j)(1) or (4) of this AD or as an alternative to the inspections required by paragraph (j) of this AD. Removing the v-band coupling from service and installing a new v-band coupling does not terminate the requirement to repeat the inspections in paragraph (j) or (k) of this AD.

(i) Using crocus cloth and mineral spirits or Stoddard solvent, clean the outer band of the v-band coupling. Pay particular attention to the spot weld areas on the v-band coupling. If there is corrosion that cannot be removed by cleaning or if there is pitting, before further flight, remove the v-band coupling from service and install a new v-band coupling.

(ii) Using a 10X magnifying glass, visually inspect the outer band for cracks, paying particular attention to the spot weld areas. If there is a crack, before further flight, remove the v-band coupling from service and install a new v-band coupling.

(iii) Visually inspect the flatness of the outer band using a straight edge. Lay the straight edge across the width of the outer band as depicted in figure 1 to paragraph (k)(1)(iii) of this AD. If the gap between the outer band and the straight edge exceeds 0.062 inch, before further flight, remove the v-band coupling from service and install a new v-band coupling.

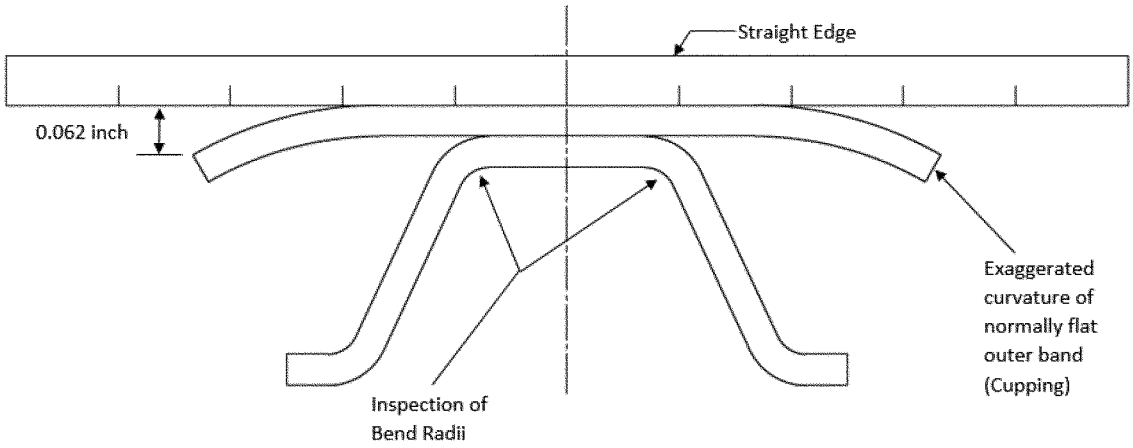

Figure 1 to paragraph (k)(1)(iii) – Inspection Depiction

(iv) With the t-bolt in the 12 o'clock position, visually inspect the attachment of the outer band to the v-retainer coupling segments for gaps between the outer band and the v-retainer coupling segments from the 1 o'clock through 11 o'clock positions. If there are any gaps between the outer band and the v-retainer coupling segments, before further flight, remove the v-band coupling from service and install a new v-band coupling.

Note 2 to paragraph (k)(1)(iv): You may use backlighting to see gaps.

(v) Visually inspect the bend radii of the v-retainer coupling segments, throughout the length of the segment, as depicted in figure 1 to paragraph (k)(1)(iii) of this AD, for cracks. If there are any cracks, before further flight, remove the v-band coupling from service and install a new v-band coupling.

(vi) Visually inspect the outer band opposite the t-bolt for damage (distortion, creases, bulging, or cracks) caused by excessive spreading of the coupling during installation or removal. If there is any damage, before further flight, remove the v-band coupling from service and install a new v-band coupling.

(2) If the v-band coupling passes all of the inspections in paragraphs (k)(1)(i) through (vi) of this AD, it may be re-installed.

(i) Apply correct torque as necessary to the v-band coupling nut.

(ii) Inspect the v-band coupling to determine whether there is space between the two v-retainer coupling segments next to the t-bolt. If there is no space between the two v-retainer coupling segments next to the t-bolt, before further flight, remove the v-band coupling from service and install a new v-band coupling.

(l) Installation Prohibitions

(1) From the effective date of this AD until two years after the effective date of this AD, do not install a v-band coupling that has accumulated more than zero hours TIS on any turbocharged airplane, helicopter, or engine, unless it has passed all inspections required by paragraph (j) or (k) of this AD.

(2) As of two years after the effective date of this AD, do not install a v-band coupling that has accumulated more than zero and less than 500 hours TIS on any turbocharged airplane, helicopter, or engine, unless it has passed all inspections required by paragraph (j) or (k) of this AD.

(3) As of two years after the effective date of this AD, do not install a v-band coupling that has accumulated 500 or more hours TIS on any turbocharged airplane, helicopter, or engine.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Operational Safety 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 Operational Safety Office, send it to the attention of the person identified in paragraph (n)(1) of this AD and email to: *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.

(n) Related Information

(1) For more information about this AD, contact Thomas Teplik, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 S Airport Road, Wichita, KS 67209; phone: (316) 946–4196; email: *thomas.teplik@faa.gov* or *Wichita-COS@faa.gov.*

(2) The ''Exhaust System Turbocharger to Tailpipe V-band Coupling/Clamp Working Group Final Report,'' dated January 2018, may be found in the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0891.

(o) Material Incorporated by Reference

None.

Issued on July 20, 2022.

Christina Underwood,

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

[FR Doc. 2022–16139 Filed 7–25–22; 4:15 pm]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 432

Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') seeks public comment on proposed amendments to the Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products (''Amplifier Rule'' or ''Rule''). The proposal requires sellers making power-related claims to calculate power output using uniform testing methods to allow consumers to easily compare amplifier sound quality. Additionally, the Commission seeks comment on the normal usage of multichannel home theater amplifiers.

DATES: Written comments must be received on or before September 26, 2022. Parties interested in an opportunity to present views orally should submit a request to do so as explained below, and such requests must be received on or before September 26, 2022.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Amplifier Rule Review, Project No. P974222'' on your comment and file your comment online through *https://www.regulations.gov.* If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex A), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jock Chung, Attorney, (202) 326–2984, *jchung@ftc.gov,* Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission promulgated the Amplifier Rule in 1974 to address sellers' failure to provide essential pre-purchase information.[1] Specifically, manufacturers of home entertainment amplifiers described their products' performance through power output claims (*e.g.,* ''25 Watts.''). However, because manufacturers tested amplifiers under a variety of conditions and used incompatible procedures, consumers could not effectively use the wattage claims to compare the power characteristics of different brands or determine how individual amplifiers would perform. The Commission noted ''[s]ince the mid-50's the [audio] industry'' had failed ''to agree upon a single industry standard which is meaningful to the consumer.'' [2] Accordingly, the Rule standardized the measurement and disclosure of some, but not all, performance characteristics of power amplification equipment to permit consumers to ''assure that all performance characteristics are based upon conditions of normal use by the consumer, *i.e.,* conditions which are encountered in the home.'' [3]

Under the Rule, sellers making certain power claims (*i.e.,* for power output, power band or power frequency response, or distortion characteristics) must disclose power output measured under specified test conditions; for example, amplifiers must be tested at an ambient air temperature of at least 77 °F (25 °C).[4] The Rule, however, does not specify values for three test conditions that strongly affect power output measurements: load impedance,[5] rated power band or power frequency response,[6] and Total Harmonic Distortion (THD).[7] Instead, it requires sellers to disclose these conditions when making certain power claims in product brochures and manufacturer specification sheets.[8] The original Rule required these disclosures wherever sellers made these claims; [9] however, in 2000, the Commission eliminated disclosure requirements in ''media advertising.'' [10]

Additionally, the Rule requires manufacturers to fully drive all ''associated'' channels to the rated per channel power when measuring the power output of sound amplification equipment designed to amplify two or more channels simultaneously.[11] When the Commission established the Rule, stereo amplifiers were the only equipment subject to this requirement, and, importantly, normal consumer use drove both ''associated'' channels equally. This requirement prevented manufacturers from deceiving consumers by driving only one channel in testing, and thus inflating power output.[12]

The introduction of ''home theater'' equipment with five or more channels improved consumer amplification choices but raised questions regarding which of these new channels were ''associated'' under the Rule.[13]

[1] 39 FR 15387 (May 3, 1974).

[2] 39 FR 15388.

[3] 39 FR 15392. Merely testing amplifiers under identical test conditions will not produce useful consumer information if the test conditions differ significantly from normal use conditions.

[4] This requirement prevents testing with cooling equipment while driving amplifiers to high power outputs that would overheat amplifiers during normal use. 16 CFR 432.3(d).

[5] The current Amplifier Rule, as amended, sets a default load impedance of 8 ohms for measuring power output, but permits measurement at a different load impedance if the amplifier is designed primarily for that impedance. 16 CFR 432.2(a). ''[T]he lower the load impedance utilized in testing . . . equipment, the higher the output of the amplifier.'' 39 FR 15387, 15390 (May 3, 1974). For example, an amplifier that outputs 550 watts into 2 ohms might only output 350 watts into 4 ohms and 215 watts into 8 ohms. *See https://geoffthegreygeek.com/speaker-impedance-changes-amplifier-power/.*

[6] High quality amplifiers can output a broad range of frequencies, such as the sounds of all the instruments in an orchestra, at high power. Lower quality amplifiers can only output certain frequencies, such as 1 kHz (*e.g.,* the sound of a trumpet), at high power, and output lower frequencies (*e.g.,* a timpani or bass) or higher frequencies (*e.g.,* a piccolo) at lower power. Power output measurements made at a single frequency or over a limited power band do not permit consumers to distinguish such amplifiers. The Commission has stated ''a measurement [on a 1 kHz test signal] is inherently deceptive to the consumer who expects that a piece of equipment represented as being capable of a stated power output will deliver that power output across its full audio range.'' 39 FR 15387, 15390 (May 3, 1974).

[7] The output of an amplifier driven to higher power will distort and sound different from the original performance. When the Commission promulgated the Rule, it received evidence that distortion limits during testing affect power output measurements; for example, the same amplifier might output 20 watts if driven only until the output reached 0.5% THD, and output 30 watts when driven to 5% THD. The Rule requires disclosure of the THD during testing so consumers can determine the value of power output measurements. 39 FR 15387, 15391–92 (May 3, 1974).

[8] 16 CFR 432.2(b).

[9] 16 CFR 432.2 (1974).

[10] 65 FR 81232 (Dec. 22, 2000).

[11] Associated channels are channels driven continuously during normal consumer usage, so measuring power output with associated channels fully driven reflects normal consumer usage. 65 FR 81232, 81236 (Dec. 22, 2000).

[12] Most amplifiers distribute power from one power supply to all channels being driven (playing sound) at a particular moment, so the total power output of multiple channels is limited by that power supply. A stereo amplifier tested with one channel fully driven would distribute all of the power from its power supply to that one channel. The power supply would not be able to direct twice as much power to two channels, as consumers might expect from a measurement made on only one channel.

[13] When the Commission promulgated the Rule, it noted the possibility of amplifiers with more than two channels and the importance of testing such amplifiers appropriately. It stated ''4-channel sound systems have been introduced which, if rated according to their total power output, would, in the Commission's view, have an even greater tendency to deceive the average consumer.'' 39 FR 15388, 15390 (May 3, 1974).

Consequently, in 2000 the Commission issued a supplemental notice of proposed rulemaking (''SNPR'') soliciting evidence on which channels multichannel amplifiers fully drive during normal usage.[14] The Commission also sought comment on its proposal to amend the definition of ''associated channels'' to reflect real-world use. The Commission received only one comment in response. The Consumer Electronics Association (''CEA'') noted there was no industry consensus regarding measuring power output of multichannel amplifiers.

On January 15, 2002, at CEA's request, the Commission deferred action to allow industry to form a consensus on procedures for testing multichannel amplifiers.[15] Although CEA subsequently issued a standard, designated EIA/CEA–490–A, ''Test Methods of Measurement for Audio Amplifiers,'' the Commission did not find widespread adoption of this standard. With no industry standard in place and only CEA's comment on the record, the Commission decided not to amend the Rule. 72 FR 13052 (March 20, 2007).

On February 27, 2008, the Commission published notification in the **Federal Register** seeking comment on the Amplifier Rule as part of its periodic review of the Rule to determine its effectiveness and impact.[16] Sony Electronics Inc. (''Sony'') urged the Commission not to amend the Rule to define all channels of a multichannel home theater system as ''associated.'' Sony explained ''the additional channels in today's 5.1 and 7.1 home theater systems are designed to carry vastly different sounds at vastly different levels.'' Thus, Sony asserted driving all channels simultaneously during testing would not represent actual use and would drive up consumer prices.[17] On January 26, 2010, based on the record at that time, the Commission again retained the Rule in its current form, finding a continuing need for the Rule and that it imposed minimal costs on industry. Although the Commission did not amend the test procedures for multichannel amplifiers, it provided guidance confirming it would be a violation of the Rule to make power output claims for multichannel amplifiers utilized in home entertainment products unless those representations are substantiated by measurements made with, at a minimum, the left front and right front channels driven to full rated power.[18]

Pursuant to its ongoing regulatory review schedule, on December 18, 2020, the Commission published an advance notice of proposed rulemaking (ANPR) seeking comment on the Amplifier Rule. 85 FR 82391 (Dec. 18, 2020). The ANPR sought comments regarding possible Rule improvements, its continuing need, costs and benefits, and whether, and how, technological or economic changes have affected the Rule.

II. Comments Received in Response to the ANPR

The Commission received 530 unique comments in response to its ANPR.[19] The commenters primarily consisted of amplifier and speaker manufacturers, amplifier sellers and purchasers, and engineers or journalists in the audio field.

A. Support for Retaining the Rule

All but one commenter supported retaining the Rule.[20] Commenters explained the Amplifier Rule enables consumers to make informed, ''apples-to-apples'' comparisons, and creates incentives for manufacturers to produce superior amplifiers.[21] Commenters further asserted if the Commission were to rescind the Rule, the audio amplifier marketplace would return to the ''Wild West'' conditions that initially led to its promulgation.[22] Additionally, commenters noted the Rule imposes insignificant or no costs on industry.[23] Commenters noted changes in the audio marketplace have increased the need for the Rule. For example, Garry Grube (187) stated the shift from purchases in stores, where consumers could listen to amplifiers, to online purchases increases consumers' reliance on power output measurements. David R. (424) stated larger modern living spaces require more powerful amplifiers, increasing the importance of reliable power output ratings. Based on this near universal support, the Commission concludes there is a continuing need for the Rule.

B. Recommended Amendments

Although commenters overwhelmingly supported the Amplifier Rule, some recommended amendments. Specifically, commenters asked the Commission to specify values for load impedance, power band, and THD during testing; and to define the associated channels in multichannel amplifiers used for home theaters.

a. Comments Recommending Specifying Test Conditions

Numerous commenters urged the Commission to require uniform power band, load impedance, and THD limits for measuring amplifier power output. Specifically, one hundred and seventy three commenters proposed standardizing testing with at least one of the following specifications: a load impedance of 8 ohms, a power band of 20 Hz to 20 kHz, and a THD limit of less than 0.1%.[24] These commenters generally asserted that uniform test conditions would address consumer confusion resulting from advertising of

[14] 65 FR 80798 (Dec. 22, 2000).

[15] 67 FR 1915 (Jan. 15, 2002).

[16] 73 FR 10403 (Feb. 27, 2008).

[17] Sony, *https://www.ftc.gov/policy/public-comments/comment-534789-00003.*

[18] 75 FR 3985, 3987 (Jan. 26, 2010).

[19] These comments are available at *https://www.regulations.gov/document/FTC-2020-0087-0001/comment.* In this document, commenters are referred to by name and the number assigned to each comment; for example, the comment from Garry Grube, assigned ID FTC–2020–0087–0187 on *www.regulations.gov,* is referred to as ''Garry Grube (187).''

[20] The one commenter did not provide a substantive comment.

[21] *See, e.g.,* Norman Parks (105) (''Without these FTC guidelines in effect, consumers have no possible way of honestly comparing products at time of purchase. In addition, retailers and manufacturers are not able to present products fairly to consumers, and might be inclined to sell inferior products with inflated specifications, harming consumers.'') and John Richardson (524) (''In 1974 the FTC dragged all manufacturers, the world over, kicking and screaming, to the honesty table. No longer could they brazenly advertise fictitious and deceptive power output and other claims if they were to sell their products in the US. . . . [C]onsumers the world over benefitted from that Gold Standard in truth. A golden age of quality products were *[sic]* built and marketed, which still stand the test of time and remain highly coveted by collectors and people interested in sustainable, high performance electronics. The 1974 Amplifier rule created a level playing field for manufacturers and a requirement to comply with straightforward, easily understood and meaningful set of parameters.'').

[22] *See, e.g.,* Richard Swerdlow (15) (''At present, buyers of these products can only compare their power output because they are rated by the same method. If that is abandoned, there would be no standard method. Manufacturers would be free to invent their own rating methods. Buyers would be unable to compare products from different manufacturers, and they would be easily misled by advertising exaggerations.'') and Thomas Estell (128) (''As someone who was a consumer of home entertainment products in the 1960s and 1970s, I urge you to renew this consumer protection rule and avoid the 'Wild West' marketplace that created this rule.'').

[23] *See, e.g.,* comment from Toby Montezuma (549) (''[T]his Rule itself does of course impose some additional cost compared to simply making up big numbers in the marketing department. However, the costs of equipment and time to make simple power tests are quite minimal and indeed are inherent in the process of designing amplifiers, so we can say there is really no additional cost at all.'').

[24] Twenty-seven commenters recommended specifying the load impedance; 36 recommended specifying the power band to be 20 Hz to 20 kHz; 26 recommended specifying a THD or requiring a low THD, and 159 recommended, in conjunction with a recommendation regarding multichannel amplifier testing, specifying values for all three test conditions.

unrealistic power outputs.[25] For example, commenter David Rich (548) noted ''online product literature is showing values up to twice the power'' compared to tests conducted under conditions that reflect normal consumer usage.

Consistent with these comments, FTC staff found this problem was ubiquitous in the marketplace. Specifically, staff found dozens of examples of the same equipment advertised with significantly different power output (*e.g.,* some sellers advertised a particular model with 45 watts output per channel, while others advertised the same model with 100 watts per channel [26]). Using specification sheets on manufacturers' websites, staff confirmed these widely divergent output claims result from different testing parameters.

Based on the comments and staff's review, the Commission finds consumers are unlikely to understand the complex power output disclosures marketers are making under the current Rule.[27] Specifically, FTC staff's review of advertisements shows, in some cases, amplifiers are advertised with widely differing power outputs due to testing conditions. For example, FTC staff reviewed advertisements for two amplifiers and found that—when tested under identical conditions [28]—Amplifier A (75 watts) had a higher power output than Amplifier B (45 watts).[29] However, staff's review found advertisements in which Amplifier B was advertised as outputting 100 watts because it was tested under more favorable conditions.[30] These types of confusing disclosures are likely to deceive many consumers who, when comparing two amplifiers, are likely to reasonably conclude that an amplifier advertised as outputting ''75 watts'' is less powerful than an amplifier advertised as outputting ''100 watts.''

In the past, the Commission has attempted to rectify this problem by requiring sellers to disclose load impedance, rated power band or power frequency response, and Total Harmonic Distortion (THD). The Rule first required these disclosures in all ''media advertising'' and later just in brochures and specification sheets. However, returning to this stricter disclosure regime is unlikely to adequately address the problem in the modern marketplace. Specifically, given the technical nature of the disclosed terms, and the complex calculations needed to convert the disclosure into apples-to-apples comparisons of power output claims, these disclosures are unlikely to prevent most consumers from being deceived. The problem is amplified because consumers shop online more frequently, providing fewer opportunities to listen to equipment before purchasing it.

Therefore, to eliminate widespread claims regarding power output that are likely to confuse or deceive consumers, the Commission proposes amending the Amplifier Rule to simplify power output measurements by standardizing test parameters. Specifically, the Commission proposes requiring the following standard testing parameters: load impedance of 8 ohms, a power band of 20 Hz to 20 kHz, and a THD limit of less than 0.1%. Staff's review found amplifiers are generally designed to drive a nominal load impedance of 8 ohms; 20 Hz to 20 kHz covers the normal range of human hearing; [31] and 0.1% THD does not audibly distort a signal. Several commenters suggested these parameters, and many manufacturers' specification sheets already disclose power outputs tested at 8 ohms, 20 Hz to 20 kHz, and at THD limits of or slightly below 0.1%, *e.g.,* at 0.08%.

b. Comments Recommending Amending the Definition of Associated Channels for Testing Multichannel Home Theater Amplifiers

Numerous commenters recommended amending the Rule to clarify which channels are associated for testing multichannel home theater amplifiers. Several commenters recommended defining all channels of a multichannel amplifier as associated, *i.e.,* testing with all channels fully driven.[32] However, they failed to explain how fully driving all channels related to normal usage.[33] As noted above, in 2010, the Commission considered and rejected a similar amendment because home theater systems are designed to carry different sounds at different levels on different channels. Therefore, driving all

[25] Alan Mcconnaughey *[sic]* (5) commented ''[m]ore rules should be [enacted] to require 8 ohm ratings so everything is apples do *[sic]* apples.'' Jim Mccabe *[sic]* (378) commented that amplifiers should be tested ''driven from 20 to 20k'' to ''stop the lying.'' Danny Anonymous (4325) commented ''[t]o eliminate confusion, just use Output Watts@ 1%THD.'' *See also, e.g.,* comments from Dennis Murphy, Philharmonic Audio (525) and David Rich (548).

[26] *See, e.g., https://www.crutchfield.com/p_580TX8220/Onkyo-TX-8220.html.* (viewed on Oct. 1, 2021); *https://www.amazon.com/Onkyo-TX-8220-Channel-Receiver-Bluetooth/dp/B075P831VY/ref=sr_1_1?dchild=1&keywords=Onkyo+TX-8220&qid=1633096775&sr=8-1* (viewed on Oct. 1, 2021; advertisement subsequently revised).

[27] Staff has surveyed numerous academic articles finding consumers are not able to effectively comprehend highly technical disclosures; no surveyed research found to the contrary. *See, e.g.,* The Failure of Mandated Disclosure, Omri Ben-Shahar and Carl E. Schneider, University of Pennsylvania Law Review, Vol. 159, No. 3 (February 2011), pp. 647–749, *http://www.jstor.org/stable/41149884.* The Commission promulgated the Rule so consumers would not need to perform complex calculations to derive useful power ratings. It found prior to the Rule, consumers had to ''deduct 10 to 25 percent [from the ''music power'' ratings previously claimed] and divide by 2'' to derive power ratings that reflected normal usage. 39 FR 15387, 15388 (May 3, 1974). Additionally, the Commission has previously concluded ''an insufficient number of consumers . . . understand the meaning and significance of . . . disclosures concerning power bandwidth and impedance'' 63 FR 37238 (July 9, 1998).

[28] The manufacturer's specification sheets indicated the testing conditions were 8 ohms, 20 Hz to 20 kHz, 0.08% THD, which several commenters have recommended as standard testing conditions the Commission should incorporate into the Rule.

[29] *See* Amplifier A, *at https://www.bestbuy.com/site/denon-avr-s650h-audio-video-receiver-5-2-channel-150w-x-5-4k-uhd-home-theater-surround-sound-2019--streaming-black/6333563.p?skuId=6333563* (viewed on Oct. 1, 2021; advertisement subsequently revised); Amplifier B specification sheet, *at https://www.onkyousa.com/product/tx-8220/* (viewed on Oct. 1, 2021).

[30] *See* Amplifier B, *at https://www.amazon.com/Onkyo-TX-8220-Channel-Receiver-Bluetooth/dp/B075P831VY/ref=sr_1_1?dchild=1&keywords=Onkyo+TX-8220&qid=1633096775&sr=8-1* (viewed on Oct. 1, 2021; advertisement subsequently revised). *Compare https://www.denon.com/en-us/product/av-receivers/avr-s650h?gclid=EAIaIQobChMI9L67n5ax8wIVweDICh3obgLAEAAYASAAEgLGAfD_BwE* (viewed on Oct. 4, 2021) *with https://www.onkyousa.com/product/tx-8220/* (viewed on Oct. 1, 2021). In this case, Amplifier A was measured with a load impedance of 8 ohms, a power band of 20 Hz to 20 kHz, and a Total Harmonic Distortion limit of 0.08%, while Amplifier B was measured as outputting 100 watts with a load impedance of 6 ohms, a power band of 1 kHz, and a THD limit of 10%. However, Amplifier B outputs only 45 watts when measured under the same conditions as Amplifier A (8 ohms 20 Hz to 20 kHz,, 0.08% THD).

[31] The Commission further proposes to exclude amplifiers in self-powered subwoofers used in systems that employ two or more amplifiers dedicated to different portions of the audio frequency spectrum from being tested over a power band of 20 Hz to 20 kHz. The Commission has previously recognized that while ''stand-alone . . . amplifiers . . . must reproduce signals covering the full musical frequency bandwidth,'' ''self-powered subwoofer systems . . . incorporate crossover circuitry that filters out frequencies above the bass range,'' and the amplifiers in self-powered subwoofer systems only amplify bass frequencies. 64 FR 38610, 38613–4 (July 19, 1999). Consequently, the Commission proposes to limit the power band for testing self-powered subwoofer amplifiers to the frequencies within those amplifiers' intended operating bandwidth. The proposed amendments would require testing amplifiers in self-powered full-range loudspeakers, such as full-range Bluetooth speakers that output more than two watts, over a power band of 20 Hz to 20 kHz.

[32] Forty-six commenters recommended defining all channels of a multichannel amplifier as associated.

[33] For example, Jayanath Gomes (140) commented ''[a]ll Channels driven simultaneously is the best measure for multi-channel AV receivers or Multi-Channel amplifiers.'' Larry Hyvonen (507) commented the proposed amendment would let consumers ''know the true power output of all channels driven continually.'' Dennis Dugger (448) commented that amending the Rule to require all channels driven would stop manufacturers from ''making false and misleading output claims.''

channels simultaneously during testing would not represent normal use, potentially incentivizing manufacturers to overbuild systems and raise prices without any consumer benefit.[34]

Other commenters recommended driving the three front channels to full rated power and all other channels to one-eighth rated power.[35] Again, however, these comments did not provide evidence that these parameters approximated normal use.

Accordingly, the Commission seeks evidence regarding:

(1) Which channels multichannel amplifiers fully drive simultaneously during normal usage?

(2) Which channels multichannel amplifiers partially drive during normal usage, and how hard such amplifiers drive these channels?

(3) What test procedures would best measure multichannel amplifier power output during normal usage? [36]

XI. Request for Comments

The Commission seeks comments on all aspects of the proposed requirements, including the likely effectiveness of the proposed amendments in helping the Commission combat unfair or deceptive practices in the marketing of amplifiers utilized in home entertainment equipment. The Commission also seeks comment on various alternatives to the proposed regulation, to further address disclosures. It also seeks comment on other approaches, such as the publication of additional consumer and business education. The Commission seeks any suggestions or alternative methods for improving current requirements. Commenters should provide any available evidence and data that supports their position, such as empirical data, consumer perception studies, and consumer complaints.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 26, 2022. Include ''Amplifier Rule Review, Project No. P974222'' on your comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Because of the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. To ensure that the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write ''Amplifier Rule Review, Project No. P974222'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex A), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website, *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information such as your or anyone'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 your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''[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)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this request for comment and the news release describing it. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before September 26, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

XII. Rulemaking Procedures

The Commission finds that using expedited procedures in this rulemaking will serve the public interest. Expedited procedures will support the Commission's goals of clarifying and updating existing regulations without undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views, and arguments on whether the Commission should amend the Amplifier Rule. Pursuant to 16 CFR 1.20, the Commission will use the following procedures: (1) publishing this notice of proposed rulemaking; (2) soliciting written comments on the Commission's proposals to amend the Rule; (3) holding an informal hearing, if requested by interested parties; and (4) announcing final Commission action in a document published in the **Federal Register**.

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[34] Sony commented during the earlier rule review that ''to maintain the same power ratings if it were necessary to drive all channels simultaneously during testing, virtually all manufacturers would have to change the sound platform of their amplifiers and receivers to be able to sustain such output,'' which ''would drive up the costs of production considerably, [and] in turn drive up the ultimate cost to consumers.'' 75 FR 3985, 3987 (Jan. 26, 2010).

[35] One hundred fifty-nine commenters recommended this specification. For example, Jason Hines (18) stated ''I wish the FTC to . . . amend the rule for today's multi-channel amplifier products with the following measurement: 3CH driven, full power bandwidth, 8 ohms, at specified % THD+N (max 0.1% THD+N) with remaining channels driven at 1/8th power.''

[36] The Commission has stated ''[t]he controlling consideration in determining the proper interpretation of 'associated channels' is whether audio/video receivers and amplifiers would, when operated by consumers in the home at high playback volume, be required to deliver full rated power output in all channels simultaneously, or whether such maximum stress conditions would more likely be restricted at any given moment of time to certain sub-groupings of available channels.'' 65 FR 80798, 80800 (Dec. 22, 2000). In that notification, the Commission tentatively proposed three designations for ''associated channels'' and stated that any Rule amendment would be based upon a determination by the Commission of which channels multichannel home theater amplifiers drive to full rated power simultaneously when reproducing multichannel program material in the home at high playback volume.

The Commission, in its discretion, has not chosen to schedule an informal hearing and has not made any initial designations of disputed issues of material fact necessary to be resolved at an informal hearing. Interested persons who wish to make an oral submission at an informal hearing must file a comment in response to this notification and submit a statement identifying their interests in the proceeding and describing any proposals regarding the designation of disputed issues of material fact to be resolved at the informal hearing, on or before September 26, 2022. 16 CFR 1.11. Such requests, and any other motions or petitions in connection with this proceeding, must be filed with the Secretary of the Commission.

XIII. Preliminary Regulatory Analysis and Regulatory Flexibility Act Requirements

Under Section 22 of the FTC Act, 15 U.S.C. 57b–3, the Commission must issue a preliminary regulatory analysis for a proceeding to amend a rule if the Commission: (1) estimates the amendment will have an annual effect on the national economy of $100 million or more; (2) estimates the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines the amendment will have a significant effect upon covered entities or upon consumers. The Commission has preliminarily determined the proposed amendments to the Amplifier Rule will not have such effects on the national economy, on the cost of sound amplification equipment, or on covered businesses or consumers. In developing these proposals, the Commission has sought to minimize prescriptive requirements and provide flexibility to sellers in meeting the Rule's objectives. The Commission, however, requests comment on the economic effects of the proposed amendments.

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission conduct an analysis of the anticipated economic impact of the proposed amendment on small entities. The purpose of a regulatory flexibility analysis is to ensure that an agency considers potential impacts on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. The RFA requires the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA'') with a final rule, if any, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission believes the proposed amendment would not have a significant economic impact upon small entities, although it may affect a substantial number of small businesses. Specifically, the proposed change in the disclosure requirements should not significantly increase the costs of small entities that manufacture or import power amplification equipment for use in the home. Therefore, based on available information, the Commission certifies that amending the Rule as proposed will not have a significant economic impact on a substantial number of small businesses. Although the Commission certifies under the RFA the proposed amendment would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, it is appropriate to publish an IRFA to inquire into the impact of the proposed amendment on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

The Commission proposes amending the Rule to standardize testing parameters to assist consumers in understanding power output disclosures for amplifiers and to eliminate claims regarding power output that are likely to deceive consumers.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Amendment

The Commission promulgated the Rule pursuant to section 18 of the FTC Act, 15 U.S.C. 57a. The proposed amendment would standardize testing parameters for amplifiers to prevent deceptive claims regarding power output and assist consumers in understanding power output disclosures.

C. Small Entities to Which the Proposed Amendments Will Apply

The Rule covers manufacturers and importers of power amplification equipment for use in the home. Under the Small Business Size Standards issued by the Small Business Administration, audio and video equipment manufacturers qualify as small businesses if they have 750 or fewer employees.[37] The Commission's staff estimates a substantial number of the entities covered by the Rule likely qualify as small businesses.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Commission is proposing amendments designed to simplify the Rule and provide clearer amplifier power output measurements for consumers to use to compare products. While the amendments modify the Rule's testing requirements, FTC staff do not anticipate these changes will result in higher costs for covered entities because manufacturers already test power output for their amplifiers, in many cases testing amplifiers under the conditions specified by the proposed amendments.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other Federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed amendment.

F. Significant Alternatives to the Proposed Amendment

The Commission has not proposed any specific small entity exemption or other significant alternatives because the proposed amendment would not impose any new requirements or compliance costs.

XIV. Paperwork Reduction Act

The current Rule contains various provisions that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (''OMB'') regulations implementing the Paperwork Reduction Act (''PRA''). OMB has approved the Rule's existing information collection requirements through April 30, 2024 (OMB Control No. 3084–0105). As described above, the Commission is proposing amendments to simplify power output measurements by standardizing test parameters. The amendments do not change the frequency of the testing or disclosure requirements specified under the Rule. Accordingly, FTC staff do not anticipate this change will result in additional burden hours or higher costs for manufacturers who already test power output for their amplifiers, in many cases testing amplifiers under the conditions specified by the proposed amendments. Therefore, the amendments do not require further OMB clearance.

[37] U.S. Small Business Administration, Table of Size Standards (Eff. Aug. 19, 2019).

XVI. Communications by Outside Parties to the Commissioners or Their Advisors

Pursuant to FTC Rule 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the end of the comment period. They shall be placed on the public record if the communication is received later. Unless the outside party making an oral communication is a member of Congress, such communications are permitted only if advance notice is published in the Weekly Calendar and Notice of ''Sunshine'' Meetings.[38]

List of Subjects in 16 CFR Part 432

Amplifiers, Home entertainment products, Trade practices.

For the reasons stated above, the Commission proposes to amend part 432 of title 16 of the Code of Federal Regulations as follows:

PART 432—POWER OUTPUT CLAIMS FOR AMPLIFIERS UTILIZED IN HOME ENTERTAINMENT PRODUCTS

■ 1. The authority citation for part 432 continues to read:

Authority: 38 Stat. 717, as amended; (15 U.S.C. 41–58).

■ 2. Revise § 432.2 to read as follows:

§ 432.2 Required disclosures.

Whenever any direct or indirect representation is made of the power output, power band or power frequency response, or distortion characteristics of sound power amplification equipment, the following disclosure shall be made clearly, conspicuously, and more prominently than any other representations or disclosures permitted under this part: The manufacturer's rated minimum sine wave continuous average power output, in watts, per channel (if the equipment is designed to amplify two or more channels simultaneously) at an impedance of 8 ohms, measured with all associated channels fully driven to rated per channel power. Provided, however, when measuring maximum per channel output of self-powered combination speaker systems that employ two or more amplifiers dedicated to different portions of the audio frequency spectrum, such as those incorporated into combination subwoofer-satellite speaker systems, only those channels dedicated to the same audio frequency spectrum should be considered associated channels that need be fully driven simultaneously to rated per channel power.

■ 3. Revise § 432.3(e) to read as follows:

§ 432.3 Standard test conditions.

* * * * *

(e) Rated power shall be obtainable at all frequencies within the rated power band of 20 Hz to 20 kHz without exceeding 0.1% of total harmonic distortion after input signals at said frequencies have been continuously applied at full rated power for not less than five (5) minutes at the amplifier's auxiliary input, or if not provided, at the phono input. Provided, however, that for amplifiers utilized as a component in a self-powered subwoofer in a self-powered subwoofer-satellite speaker system that employs two or more amplifiers dedicated to different portions of the audio frequency spectrum, the rated power shall be obtainable at all frequencies within the subwoofer amplifier's intended operating bandwidth without exceeding 0.1% of total harmonic distortion after input signals at said frequencies have been continuously applied at full rated power for not less than five (5) minutes at the amplifier's auxiliary input, or if not provided, at the phono input.

* * * * *

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2022–16071 Filed 7–26–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–95267; IC–34647; File No. S7–20–22]

RIN 3235–AM91

Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a–8

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing to update certain substantive bases for exclusion of shareholder proposals under the Commission's shareholder proposal rule. The proposed amendments would amend the substantial implementation exclusion to specify that a proposal may be excluded if the company has already implemented the essential elements of the proposal. We also propose to specify when a proposal substantially duplicates another proposal for purposes of the duplication exclusion. In addition, we propose to amend the resubmission exclusion to provide that a proposal constitutes a resubmission if it substantially duplicates another proposal. Under the proposed amendments, for purposes of both the duplication exclusion and the resubmission exclusion, a proposal would substantially duplicate another proposal if it addresses the same subject matter and seeks the same objective by the same means.

DATES: Comments should be received on or before September 12, 2022.

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/submitcomments.htm*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–20–22 on the subject line.

Paper Comments

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

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[38] *See* 15 U.S.C. 57a(i)(2)(A); 16 CFR 1.18(c).

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FOR FURTHER INFORMATION CONTACT: Kasey Robinson, Special Counsel, Office of Chief Counsel, at (202) 551–3500, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for public comment amendments to 17 CFR 240.14a–8 (''Rule 14a–8'') under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] (''Exchange Act'').

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I. Introduction

Exchange Act Rule 14a–8 requires companies that are subject to the federal proxy rules [1] to include shareholder proposals in their proxy statements to shareholders, subject to certain procedural and substantive requirements.[2] The rule is intended to facilitate shareholders' right under state law to present their own proposals at a company's meeting of shareholders and the ability of all shareholders to consider and vote on such proposals.[3]

Under Rule 14a–8, a company must include a shareholder's proposal in the company's proxy materials unless the proposal fails to satisfy any of several specified substantive requirements or the proposal or shareholder-proponent does not satisfy certain eligibility or procedural requirements. Companies and shareholder-proponents do not always agree on the application of these requirements. If a company intends to exclude a shareholder proposal from its proxy materials, it is required under Rule 14a–8(j)(1) to ''file its reasons'' for doing so with the Commission.[4] These notifications are generally submitted in the form of no-action requests, with companies seeking the staff's concurrence that they may exclude a shareholder proposal under one or more of the procedural or substantive bases under Rule 14a–8. For many years the staffs of the Division of Corporation Finance and the Division of Investment Management, as applicable, have engaged through the no-action letter process in the informal practice of expressing whether they would recommend enforcement action to the Commission if a company excludes a proposal from its proxy materials.[5] The staff offers its views in this manner to assist companies and shareholder-proponents in complying with the federal proxy rules.[6]

The shareholder proposal process has become a cornerstone of engagement between shareholders and company management.[7] Shareholder proposals provide an important mechanism for investors to express their views, provide feedback to companies, exercise oversight of management, and raise important issues for the consideration of their fellow shareholders in the company's proxy statement. Moreover, investor support for shareholder proposal campaigns over the years has helped to shape many current corporate practices and policies, such as annual director elections, majority vote standards for director elections, and proxy access rights for shareholders.[8]

[1] This generally includes issuers with a class of securities registered under Section 12 of the Exchange Act and issuers that are registered under the Investment Company Act of 1940 (''Investment Company Act''). Foreign private issuers are exempt from the federal proxy rules. *See* 17 CFR 240.3a12–3(b). In addition, debt securities registered under Section 12(b) are exempt from the federal proxy rules, with some exceptions. *See* 17 CFR 240.3a12–11(b).

[2] 17 CFR 240.14a–8. Unless otherwise noted, references to ''shareholder proposal,'' ''shareholder proposals,'' ''proposal,'' or ''proposals'' refer to submissions made in reliance on Rule 14a–8.

[3] *See, e.g.,* Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a–8, Release No. 34–87458 (Nov. 5, 2019) [84 FR 66458 (Dec. 4, 2019)] (''2019 Proposing Release'') (''The rule . . . facilitates shareholders' traditional ability under state law to present their own proposals for consideration at a company's annual or special meeting, and it facilitates the ability of all shareholders to consider and vote on such proposals.''); Alan Palmiter & Frank Partnoy, Corporations: A Contemporary Approach 482 (1st ed. 2010) (''The shareholder proposal rule is a federal mechanism to facilitate state-created shareholder voting rights'').

[4] 17 CFR 240.14a–8(j)(1).

[5] *See* Statement of Informal Procedures for the Rendering of Staff Advice With Respect to Shareholder Proposals, Release No. 34–12599 (July 7, 1976) [41 FR 29989 (July 20, 1976)] (''Statement of Informal Procedures'').

[6] *See id.* No-action letters issued under Rule 14a–8 by the Divisions of Corporation Finance and Investment Management are available at *https://www.sec.gov/corpfin/shareholder-proposals-no-action* and *https://www.sec.gov/investment/investment-management-no-action-letters,* respectively.

[7] *See infra* note 8.

[8] *See, e.g.,* Emiliano M. Catan & Marcel Kahan, *The Never-Ending Quest for Shareholder Rights: Special Meetings and Written Consent,* 99 B.U. L. Rev. 743 (2019), *available at https://www.bu.edu/bulawreview/files/2019/06/CATAN-KAHAN.pdf* (discussing the impact of shareholder activists on the elimination of staggered boards and other governance matters); Yaron Nili & Kobi Kastiel, *The Giant Shadow of Corporate Gadflies,* 94 S. Cal. L. Rev. 569, 571–76 (2021), *available at https://www.sec.gov/comments/s7-23-19/s72319-6733874-207512.pdf* (discussing the influence of corporate ''gadflies'' over corporate governance practices); Kosmas Papadopoulos, ISS Analytics, *The Long View: The Role of Shareholder Proposals in Shaping U.S. Corporate Governance (2000–2018),* Harvard Law School Forum on Corporate Governance (Feb. 6, 2019), *https://corpgov.law.harvard.edu/2019/02/06/the-long-view-the-role-of-shareholder-proposals-in-shaping-u-s-corporate-governance-2000-2018/* (discussing the impact of shareholder proposals on corporate governance).

Since Rule 14a–8 was adopted in 1942,[9] the Commission has amended the rule on numerous occasions, as necessary to improve the operation of the shareholder proposal process and to provide its views on the application of the rule's procedural and substantive requirements.[10] The most recent amendments to Rule 14a–8, adopted on September 23, 2020, relate to certain procedural requirements as well as the resubmission exclusion under Rule 14a–8(i)(12), as discussed below in Section II.C.1.[11]

The proposed amendments are intended to improve the shareholder proposal process based on modern developments and the staff's observations. The amendments we propose to each of Rule 14a–8(i)(10), 14a–8(i)(11), and 14a–8(i)(12) would facilitate shareholder suffrage and communication between shareholders and the companies they own, as well as among a company's shareholders, on important issues. In this regard, the proposed amendments are intended to ''insure that public investors receive full and accurate information about all security holder proposals that are to, or should, be submitted to them for their action . . . [and] have . . . the opportunity to vote'' on such proposals.[12] The proposed amendments also would enhance the ability of shareholders to express diverse objectives and various ways to achieve those objectives through the shareholder proposal process. In addition, the proposed amendments would set forth a clearer framework for the application of certain of the rule's substantive bases for the exclusion of proposals and should thereby provide greater certainty and transparency to shareholders and companies as they evaluate whether these bases would apply to particular proposals.

We are proposing modifications to, and seeking public comment on, three of the rule's substantive bases for exclusion: Rule 14a–8(i)(10), Rule 14a–8(i)(11), and Rule 14a–8(i)(12). In addition, while we do not propose to amend Rule 14a–8(i)(7),[13] the ordinary business exclusion, at this time, we reaffirm the standards the Commission articulated in 1998 for determining whether a proposal relates to ordinary business for purposes of Rule 14a–8(i)(7).[14]

As shown in Table 1, the bases for exclusion in Rule 14a–8(i)(10), Rule 14a–8(i)(11), and Rule 14a–8(i)(12) collectively represent a significant percentage of the no–action requests the staff has received under Rule 14a–8.[15]

TABLE 1

	2020–2021 (Total: 266)	2019–2020 (Total: 238)	2018–2019 (Total: 226)
Rule 14a–8(i)(10)—Substantial Implementation			
Number of Requests	110	90	83
Granted on (i)(10)	36 (33%)	45 (50%)	37 (45%)
Granted on Other Basis	10 (9%)	8 (9%)	6 (7%)
Denied	31 (28%)	24 (27%)	21 (25%)
Withdrawn	33 (30%)	13 (14%)	19 (23%)
Rule 14a–8(i)(11)—Duplication			
Number of Requests	12	9	16
Granted on (i)(11)	3 (25%)	4 (44%)	7 (44%)
Granted on Other Basis	1 (8%)	0	6 (38%)
Denied	5 (42%)	1 (11%)	2 (13%)
Withdrawn	3 (25%)	4 (44%)	1 (6%)
Rule 14a–8(i)(12)—Resubmissions			
Number of Requests	2	3	1
Granted on (i)(12)	1 (50%)	0	1 (100%)
Granted on Other Basis	1 (50%)	1 (33%)	0
Denied	0	1 (33%)	0
Withdrawn	0	1 (33%)	0

[9] Release No. 34–3347 (Dec. 18, 1942) [7 FR 10655 (Dec. 22, 1942)]. At the time, the rule did not set forth substantive bases for exclusion. It provided as follows: ''In the event that a qualified security holder of the issuer has given the management reasonable notice that such security holder intends to present for action at a meeting of security holders of the issuer a proposal which is a proper subject for action by the security holders, the management shall set forth the proposal. . . .''

[10] *See* Amendments To Rules On Shareholder Proposals, Release No. 34–40018 (May 21, 1998) [63 FR 29106 (May 28, 1998)] (''1998 Adopting Release'') (noting that the Commission would ''continue to explore ways to improve the [shareholder proposal] process as opportunities present themselves'').

[11] Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a–8, Release No. 34–89964 (Sept. 23, 2020) [85 FR 70240 (Nov. 4, 2020)] (''2020 Adopting Release'').

[12] *See* Statement of Informal Procedures, *supra* note 5.

[13] 17 CFR 240.14a–8(i)(7).

[14] In the 1998 Adopting Release, *supra* note 10, the Commission stated: ''The policy underlying the ordinary business exclusion rests on two central considerations. The first relates to the subject matter of the proposal. . . . [P]roposals relating to [ordinary business] matters but focusing on sufficiently significant social policy issues . . . generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote. . . . The second consideration relates to the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.'' The Commission also clarified that specific methods, time-frames, or detail do not necessarily amount to micromanagement and are not dispositive of excludability.

[15] Table 1 shows requests received by the Division of Corporation Finance and the Division of Investment Management from October 1 through June 30 of each time period shown. The percentages in parentheses in each column of the table represent percentages of the total number of no-action requests that assert Rule 14a–8(i)(10), Rule 14a–8(i)(11), and Rule 14a–8(i)(12), respectively (as noted in each respective ''Number of Requests'' row).

First, we propose to amend Rule 14a–8(i)(10), the substantial implementation exclusion, which allows companies to exclude a shareholder proposal that ''the company has already substantially implemented.'' [16] This standard has remained substantively unchanged since 1983.[17] We propose to amend this rule to specify that a proposal may be excluded if ''the company has already implemented the essential elements of the proposal.'' The proposed amendment would provide a clearer standard for exclusion and promote more consistent and predictable determinations regarding the exclusion of proposals under the rule.

Second, we propose to amend Rule 14a–8(i)(11), the duplication exclusion, which allows companies to exclude a shareholder proposal that ''substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting.'' [18] The duplication exclusion has not been substantively updated by the Commission since its adoption in 1976.[19] The proposed amendment would specify that a proposal ''substantially duplicates'' another proposal if it ''addresses the same subject matter and seeks the same objective by the same means.''

Third, we propose to amend Rule 14a–8(i)(12), the resubmission exclusion, which allows companies to exclude a shareholder proposal that ''addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years'' if the matter was voted on at least once in the last three years and did not receive at least:

- 5 percent of the votes cast if previously voted on once;
- 15 percent of the votes cast if previously voted on twice; or
- 25 percent of the votes cast if previously voted on three or more times.[20]

Although the resubmission thresholds themselves were reviewed and amended by the Commission in 2020,[21] the ''substantially the same subject matter'' test has been in place since 1983.[22] We propose to amend the resubmission exclusion to provide that a resubmission is a shareholder proposal that ''substantially duplicates'' a proposal previously included in a company's proxy materials, which would replace the current ''substantially the same subject matter'' test. This proposed amendment would align the ''resubmission'' standard with the ''duplication'' standard under Rule 14a–8(i)(11), in consideration of the similar objectives of these exclusions. As noted above with respect to the proposed amendment to Rule 14a–8(i)(11), we also propose to specify for purposes of Rule 14a–8(i)(12) that a proposal ''substantially duplicates'' another proposal if it ''addresses the same subject matter and seeks the same objective by the same means.''

We welcome feedback and encourage interested parties to submit comments on any or all aspects of the proposed amendments. When commenting, it would be most helpful if you include the reasoning behind your position or recommendation.

II. Discussion of the Proposed Amendments

A. Rule 14a–8(i)(10)—Substantial Implementation

1. Background

Rule 14a–8(i)(10), the substantial implementation exclusion, allows a company to exclude a shareholder proposal that ''the company has already substantially implemented.'' [23] The purpose of the exclusion is to ''avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management.'' [24] During the 2021, 2020, and 2019 proxy seasons, the staff received 110, 90, and 83 no-action requests, respectively, asserting the substantial implementation exclusion. Of these, the staff concurred in the exclusion of 36, 45, and 37 of the requests, respectively, on the basis of the substantial implementation exclusion.

Prior to 1983, Rule 14a–8(i)(10) did not include a concept of ''substantial implementation,'' and exclusion under the rule was permitted only in those cases in which a proposal had been fully effected.[25] In 1983, however, the Commission announced an interpretive change to permit exclusion of proposals that had been ''substantially implemented by the issuer.'' [26] The Commission acknowledged that the interpretive position would ''add more subjectivity to the application of the provision'' but believed the change was necessary as the ''previous formalistic application of this provision defeated its purpose,'' [27] given that the exclusion was available only when a proposal had been fully effected—that is, when a company had taken all of the actions requested by the proposal.[28] In 1998 the Commission adopted the current language of Rule 14a–8(i)(10) to reflect the interpretation it announced in 1983.[29] The Commission has not revised Rule 14a–8(i)(10) since that time, except to add a note to paragraph (i)(10) to clarify the status of shareholder proposals that seek an advisory shareholder vote on executive compensation or that relate to the frequency of shareholder votes approving executive compensation.[30]

Because of the fact-intensive nature of the rule, over the years the staff has applied various, but similar, interpretive frameworks to determine whether a shareholder proposal has been substantially implemented by a company. For instance, the staff has indicated that a ''determination that the [c]ompany has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal.'' [31] The staff also has considered whether the company has addressed a proposal's underlying concerns and whether the essential objectives of a proposal have been met. When considering whether a proposal has been substantially implemented, companies, shareholder-proponents, and the staff sometimes divide a proposal into its elements and evaluate which of them have been implemented. However, a proposal may be viewed as substantially implemented even if a company has not implemented all of the proposal's elements.[32]

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[16] 17 CFR 240.14a–8(i)(10).

[17] *See* Amendments to Rule 14a–8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34–20091 (Aug. 16, 1983) [48 FR 38218 (Aug. 23, 1983)] (''1983 Adopting Release'').

[18] 17 CFR 240.14a–8(i)(11).

[19] *See* Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34–12999 (Nov. 22, 1976) [41 FR 52994 (Dec. 3, 1976)] (''1976 Adopting Release'').

[20] 17 CFR 240.14a–8(i)(12).

[21] *See* 2020 Adopting Release, *supra* note 11.

[22] *See* 1983 Adopting Release, *supra* note 17.

[23] 17 CFR 240.14a–8(i)(10).

[24] Proposals by Security Holders, Release No. 34–12598 (July 7, 1976) [41 FR 29982, at 29985 (July 20, 1976)] (''1976 Proposing Release'').

[25] At the time, the rule text provided for exclusion where ''the proposal has been rendered moot.''

[26] *See* 1983 Adopting Release, *supra* note 17.

[27] *Id.*

[28] *See* Proposed Amendments to Rule 14a–8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34–19135 (Oct. 14, 1982) [47 FR 47420 (Oct. 26, 1982)], at 47429 (''1982 Proposing Release'').

[29] *See* 1998 Adopting Release, *supra* note 10.

[30] *See* Shareholder Approval of Executive Compensation and Golden Parachute Compensation, Release No. 34–63768 (Jan. 25, 2011) [76 FR 6010 (Feb. 2, 2011)].

[31] *See Texaco, Inc.* (Mar. 28, 1991).

[32] *See, e.g., WD–40 Co.* (Sept. 27, 2016) (concurring under Rule 14a–8(i)(10) in the

Continued

We continue to believe that it is appropriate under Rule 14a–8(i)(10) to apply a ''substantial'' implementation standard, rather than the ''full'' implementation standard that was in place prior to 1983. We recognize, however, that there are many potential interpretations of what a substantial implementation standard may require, on a spectrum from minimal implementation to all but full implementation. In view of the staff's experience with the substantial implementation exclusion, we are concerned that the current rule may be difficult to apply in a consistent and predictable manner.[33] Moreover, we believe that the language of the current rule is insufficiently focused on the specific actions requested by a proposal—*i.e.,* its elements—and, thus, it may not serve the original purpose of the exclusion to avoid the consideration of proposals on which a company already has ''favorably acted.'' [34]

Additionally, some observers have expressed concerns about variation and potential unpredictability in the operative principles guiding the staff's interpretation of the substantial implementation exclusion.[35] For example, with respect to shareholder proposals requesting a report, some have observed that the staff may find a proposal substantially implemented based on ''voluminous but unresponsive reporting'' that does not answer the core questions raised by the proposal.[36] Some shareholders also have expressed concerns about the difficulty of ''threading the needle'' when seeking to draft a proposal that does not ''micro-manage'' the company under Rule 14a–8(i)(7) [37] but still provides sufficient specificity and direction to avoid exclusion as ''substantially implemented'' under Rule 14a–8(i)(10) when a company had not implemented its essential elements.[38]

2. Proposed Amendment

In view of these considerations, we are proposing an amendment to Rule 14a–8(i)(10) that would maintain a ''substantial'' implementation standard and provide a clearer framework for its application. The proposed rule would state that a proposal may be excluded as substantially implemented ''[i]f the company has already implemented the essential elements of the proposal.'' Whether a proposal has been substantially implemented necessarily involves a factual determination to be made on a case-by-case basis. We believe that an analysis that focuses on the specific elements of a proposal would provide a reliable indication of whether the actions taken to implement a proposal are sufficiently responsive to the proposal such that it has been substantially implemented.

Determining whether a proposal could be excluded under the proposed amendment would still require a degree of substantive analysis—a determination of which elements of the proposal are the ''essential elements'' and an analysis of whether those elements have been addressed. In determining the essential elements of a proposal, we anticipate that the degree of specificity of the proposal and of its stated primary objectives [39] would guide the analysis. The proposed amendment would permit a shareholder proposal to be excluded as substantially implemented only if the company has implemented all of its essential elements.

Under the proposed amendment, a proposal need not be rendered entirely moot, or be fully implemented in exactly the way a proponent desires, in order to be excluded. A company may be permitted to exclude a proposal it has not implemented precisely as requested if the differences between the proposal and the company's actions are not essential to the proposal. Where a proposal contains more than one element, every element of the proposal need not be implemented, although each essential element would need to be implemented. In instances where a proposal contains only one essential element, that essential element would need to be implemented in order to exclude the shareholder proposal under the proposed amendment.

For example, the staff historically has concurred in the exclusion, under Rule 14a–8(i)(10), of proposals seeking the adoption of a proxy access provision that allows an unlimited number of shareholders who collectively have owned 3 percent of the company's outstanding common stock for 3 years to nominate up to 25 percent of the company's directors, where the company had adopted a proxy access bylaw allowing a shareholder or group of up to 20 shareholders owning 3 percent of its common stock continuously for 3 years to nominate up to 20 percent of the board.[40] Under the proposed amendment, because the ability of an unlimited number of shareholders to aggregate their shareholdings to form a nominating group generally would be an essential element of the proposal, exclusion would not be appropriate.

As another example, where a proposal calls for a company to issue a report about a particular topic, a company's

company's exclusion of a proposal requesting that the company adopt a proxy access bylaw provision and identifying certain ''essential elements for substantial implementation'' because the company represented that ''the board has adopted a proxy access bylaw that addresses the proposal's essential objective,'' even though a number of the company's provisions differed from the proposal's terms); *NVR, Inc.* (Feb. 12, 2016, recons. granted Mar. 25, 2016) (concurring, on reconsideration, under Rule 14a–8(i)(10) in the exclusion of a proposal seeking four specific revisions to the company's existing proxy access bylaw provision where the company amended the provision to reduce the minimum ownership threshold from 5 percent to 3 percent and increased the permissible recall period for loaned shares from three to five business days, but did not eliminate the 20-person limit on the number of shareholders that may aggregate their shareholdings to form a nominating group or eliminate the requirement for nominating shareholders to represent that they will continue to own the shares required to meet the minimum ownership threshold for at least one year following the meeting).

[33] *Compare Apple Inc.* (Nov. 19, 2018) (concurring under Rule 14a–8(i)(10) in the exclusion of a proposal requesting that the company establish a board committee on international policy to oversee policies regarding matters specified in the proposal, where the company argued that its existing board committees include responsibility for the specified matters) *and Verizon Communications Inc.* (Feb. 19, 2019) (concurring under Rule 14a–8(i)(10) in the exclusion of a proposal requesting that the company establish a board committee on public policy and social responsibility to oversee policies regarding matters specified in the proposal, where the company argued that its existing board committees include responsibility for the specified matters) *with Exxon Mobil Corp.* (Apr. 2, 2019) (not concurring in the exclusion of a proposal requesting that the company establish a board committee on climate change, where the company argued that the board's public issues and contributions committee substantially implemented the proposal under Rule 14a–8(i)(10) because its responsibilities included oversight of climate change issues).

[34] 1976 Proposing Release, *supra* note 24, at 29985.

[35] *See, e.g.,* Letter to John Coates, Acting Director, Division of Corporation Finance, U.S. Securities and Exchange Commission, from Sanford Lewis, Director, Shareholder Rights Group, dated February 4, 2021, *available at https://www.corpgov.net/2021/02/reform-no-action-process/* (''February 4, 2021 Letter''); Letter to Allison Lee, Acting Chair, U.S. Securities and Exchange Commission, from Sanford Lewis, Director, Shareholder Rights Group, Mindy Lubber, Ceres, Lisa Woll, The Forum for Sustainable and Responsible Investment, and Josh Zinner, Interfaith Center on Corporate Responsibility, dated January 26, 2021, *available at https://www.iccr.org/sites/default/files/resources_attachments/chair_lee_letter_0.pdf* (''January 26, 2021 Letter'').

[36] *See, e.g.,* February 4, 2021 Letter, *supra* note 35.

[37] *See* 1998 Adopting Release, *supra* note 10.

[38] *See* Sanford Lewis, Shareholder Rights Group, *SEC Resets the Shareholder Proposal Process,* Harvard Law School Forum on Corporate Governance (Dec. 23, 2021), *https://corpgov.law.harvard.edu/2021/12/23/sec-resets-the-shareholder-proposal-process/*; January 26, 2021 Letter, *supra* note 35. *See also* Staff Legal Bulletin No. 14L, Section B.3 (Nov. 3, 2021).

[39] Proponents sometimes attempt to identify the primary objectives, elements, or features of a proposal. We expect that the more objectives, elements, or features a proponent identifies, the less essential the staff would view each of them.

[40] *See, e.g., Oracle Corp.* (Aug. 11, 2016).

existing reports or disclosures about that topic may not implement the essential elements of the proposal, especially if the plain language of the proposal explains how the company's existing reports or disclosures are insufficient. Additionally, where a proposal requests a report from the company's board of directors (such as disclosure regarding the board's assessment of a topic, or the board's process in approaching a topic), the staff may determine that the company has not implemented an essential element of the proposal if the report comes from management rather than the board, if the proposal demonstrates a clear emphasis on reporting directly from the board.

We believe that the proposed amendment would facilitate shareholder suffrage, provide a more objective and specific framework for the substantial implementation exclusion, assist the staff in more efficiently reviewing and responding to no-action requests, and benefit shareholders and companies by promoting more consistent and predictable determinations. By providing greater certainty and transparency with respect to the standard to be applied under the rule, the proposed amendment would aid shareholder-proponents, in drafting their proposals, and companies, in determining whether a proposal may be excludable under the rule.

Request for Comment

1. Should we amend the standard for exclusion under Rule 14a–8(i)(10), as proposed, to provide that a proposal may be excluded if ''the company has already implemented the essential elements of the proposal''?

2. Would the proposed amendment benefit shareholder-proponents and companies by promoting more consistent and predictable determinations regarding application of the substantial implementation exclusion? What potential costs should we consider?

3. Under the proposed amendment, the analytical framework would focus on a proposal's essential elements. The determination of which elements of a proposal are essential under that framework would be guided by the degree of specificity of the proposal and of its stated primary objectives. Is this an appropriate standard to identify a proposal's essential elements? Are there other potential approaches we should consider?

B. Rule 14a–8(i)(11)—Duplication

1. Background

Rule 14a–8(i)(11), the duplication exclusion, provides that a shareholder proposal may be excluded if it ''substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting.'' [41] During the 2021, 2020, and 2019 proxy seasons, the staff received 12, 9, and 16 no-action requests, respectively, asserting the duplication exclusion. Of these, the staff concurred in the exclusion of 3, 4, and 7 of the requests, respectively, on the basis of the duplication exclusion.

As the Commission explained when it formally adopted the duplication exclusion in 1976, ''[t]he purpose of the provision is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.'' [42] Aside from minor stylistic revisions to the provision in 1998,[43] the Commission has not updated the provision since its adoption.

Historically, in evaluating whether proposals are substantially duplicative under Rule 14a–8(i)(11), the staff has considered whether the proposals share the same ''principal thrust'' or ''principal focus.'' [44] Proposals that differ as to terms and/or scope may nevertheless be deemed substantially duplicative if the principal thrust or focus is the same. The staff's experience with Rule 14a–8(i)(11) through the no-action letter process has demonstrated that this analytical framework can be difficult to apply in a consistent and predictable manner because, as with the ''substantial implementation'' standard under current Rule 14a–8(i)(10), there are numerous potential approaches to evaluating whether a proposal is ''substantially'' duplicative as well as to discerning a proposal's principal thrust or focus. The current Rule 14a–8(i)(11) framework can necessitate fact-intensive, case-by-case judgments in determining a proposal's principal thrust or focus, and delineating the principal thrust or focus too broadly or too narrowly can lead to under- or over-inclusion of shareholder proposals, respectively.

We also note that, because Rule 14a–8(i)(11) permits exclusion only of the later-received proposal, it operates to the advantage of the first shareholder to submit a proposal that is substantially duplicative of another proposal submitted for the same meeting. Thus, the rule may create an incentive to submit a proposal quickly. As a result, the rule enables a shareholder who is first to submit a proposal for a company's meeting to preempt the consideration of later-received proposals, even though a later proposal (if it had been voted on) may have received more shareholder support. Accordingly, we are concerned that the current duplication standard may unduly constrain shareholder suffrage by limiting shareholder-proponents' ability to engage with the companies whose securities they own and with other shareholders by presenting for consideration competing approaches to addressing important issues.

2. Proposed Amendment

We are proposing an amendment to Rule 14a–8(i)(11) providing that a proposal ''substantially duplicates'' another proposal if it ''addresses the same subject matter and seeks the same objective by the same means.''

For example, consider the following two proposals: (1) a proposal requesting that the company publish in newspapers a detailed statement of each of its direct or indirect political contributions or attempts to influence legislation; and (2) a proposal requesting a report to shareholders on the company's process for identifying and prioritizing legislative and regulatory public policy advocacy activities. In considering the application of the duplication exclusion to these proposals, the staff previously had concurred that the proposals were substantially duplicative when analyzing the principal thrust or focus of the proposals.[45] Under the proposed amendment, however, these proposals would not be deemed substantially duplicative because, although they both address the subject matter of the company's political and lobbying expenditures, they seek different objectives by different means.

We believe the proposed amendment would provide a clearer standard for exclusion that would assist the staff in more efficiently reviewing and responding to no-action requests and would benefit shareholder-proponents

[41] 17 CFR 240.14a–8(i)(11).

[42] *See* 1976 Adopting Release, *supra* note 19. Prior to the Commission's formal adoption of the duplication exclusion in 1976, the exclusion ''existed . . . on an informal basis.'' *Id.*

[43] *See* 1998 Adopting Release, *supra* note 10.

[44] *See, e.g., Pacific Gas & Electric Co.* (Feb. 1, 1993) (staff response letter noting that exclusion under Rule 14a–8(i)(11) was not appropriate because the second proposal's ''principal thrust'' differed from the first proposal's ''principal focus'').

[45] *See Pfizer Inc.* (Feb. 17, 2012).

and companies by promoting more predictable and consistent determinations regarding the exclusion of proposals. By providing greater certainty and transparency with respect to the standards to be applied under the rule, the proposed amendment would aid shareholder-proponents, in drafting their proposals, and companies, in determining whether a proposal may be excludable under the rule. Moreover, the proposed amendment would promote more consistent outcomes when comparing a given proposal against proposals submitted for the same shareholder meeting for purposes of Rule 14a–8(i)(11).[46]

As discussed above, we recognize that Rule 14a–8(i)(11) operates to the advantage of the first shareholder to submit a proposal. By providing for exclusion only where a proposal ''addresses the same subject matter and seeks the same objective by the same means,'' the proposed amendment would reduce incentives for proponents to submit a proposal quickly, reduce incentives for proponents to attempt to preempt other proposals those proponents do not agree with, and facilitate the consideration at the same shareholder meeting of multiple shareholder proposals that present different means to address a particular issue. In other words, the proposed amendment would enable the consideration by a company's shareholders of later-received proposals that may be similar to and/or address the same subject matter as an earlier-received proposal but which seek different objectives or offer different means of addressing the same matter.

At the same time, we are aware of the possibility that the proposed amendment could result in the inclusion in a company's proxy materials of multiple shareholder proposals dealing with the same or similar issue. This outcome could cause shareholder confusion and may lead to conflicting or inconsistent results and implementation challenges for companies if shareholders approve multiple similar, although not duplicative, proposals. Although we believe that the benefits of the proposed amendment would justify these potential impacts, we seek comment on the possible implications for companies and shareholders.

Request for Comment

4. Should we amend the standard for exclusion under Rule 14a–8(i)(11), as proposed, to specify that a proposal ''substantially duplicates'' another proposal if it ''addresses the same subject matter and seeks the same objective by the same means''?

5. Would the proposed amendment benefit shareholder-proponents and companies by promoting more consistent and predictable determinations regarding application of the duplication exclusion? What potential costs should we consider?

6. Would the proposed amendment result in shareholder confusion or the inclusion and adoption of multiple contradictory proposals dealing with the same or similar issue? If so, what would be the implications for shareholders and companies? How would companies deal with any resulting implementation challenges? Are there potential measures we could consider to mitigate these impacts? For example, should we adopt a numerical limit on the number of shareholder proposals that address the same subject matter to be included in the proxy statement? If so, what numerical limit would be appropriate, how should such a limit be imposed, and what would be the anticipated costs of such an approach?

7. We anticipate that the proposed amendment would reduce the first-in-time advantage for the first shareholder to submit a proposal on a given topic. What is the impact of the first-in-time advantage on the ability of different shareholders to submit proposals addressing the same topic?

8. Aside from a first-in-time standard, are there alternative objective standards that should be applied to determine which proposal(s) to exclude when a company has received proposals that are substantially duplicative under Rule 14a–8(i)(11), such as the number of shares owned or the number of co-proponents?

C. Rule 14a–8(i)(12)—Resubmissions

1. Background

Rule 14a–8(i)(12), the resubmission exclusion, provides that a shareholder proposal may be excluded from a company's proxy materials if it ''addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years'' if the matter was voted on at least once in the last three years and received support below specified vote thresholds on the most recent vote.[47] During the 2021, 2020, and 2019 proxy seasons, the staff received 2, 3, and 1 no-action requests, respectively, asserting the resubmission exclusion.[48] Of these, the staff concurred in the exclusion of 1, 0, and 1 of the requests, respectively, on the basis of the resubmission exclusion.

Since 1948, the Commission has not required a company to include a shareholder proposal in its proxy statement if ''substantially the same proposal'' previously had been submitted for a shareholder vote and did not receive a specified minimum percentage of votes upon its most recent submission.[49] The Commission explained that the purpose of the provision was ''to relieve the management of the necessity of including proposals which have been previously submitted to security holders without evoking any substantial security holder interest therein.'' [50] For many years following adoption of the provision, the staff interpreted the phrase ''substantially the same proposal'' to mean one that is virtually identical (in form as well as substance) to a proposal previously included in the issuer's proxy materials.[51]

Some commentators had asserted that the provision failed to accomplish its stated purpose because proponents were able to evade exclusion of their proposals by simply recasting the form of the proposal, expanding its coverage, or by otherwise changing its language in a manner that precluded one from saying that the proposal is virtually identical to a prior proposal.[52] In view of these concerns, in 1976 the Commission proposed to revise the standard for exclusion of a proposal under the provision from ''substantially the same proposal'' to ''substantially the same subject matter.'' [53] Some commenters had urged the Commission not to adopt the proposed amendment, arguing that: (1) abuses of the existing provision had been rare and did not justify the type of radical revision

[46] As discussed in Section II.C below, we are proposing a similar amendment to Rule 14a–8(i)(12) in consideration of the similar objectives of these exclusions.

[47] 17 CFR 240.14a–8(i)(12).

[48] From October 15, 2021 through May 10, 2022, the staff received 11 no-action requests asserting the resubmission exclusion, which represents an increase in requests compared to the 2020 and 2021 proxy seasons. This increase is likely due to the higher resubmission thresholds under Rule 14a–8(i)(12) adopted in the 2020 Adopting Release, *supra* note 11, as discussed below.

[49] *See* Adoption of Amendments to Proxy Rules, Release No. 34–4185 (Nov. 5, 1948) [13 FR 6678 (Nov. 13, 1948)].

[50] *See* Notice of Proposal to Amend Proxy Rules, Release No. 34–4114 (July 6, 1948) [13 FR 3973 (July 14, 1948)].

[51] *See* 1982 Proposing Release, *supra* note 28.

[52] *Id.; see also* 1976 Proposing Release, *supra* note 24.

[53] *See* 1976 Proposing Release, *supra* note 24.

proposed; (2) the new standard would be almost impossible to administer because of the subjective determinations that it would require; and (3) it would unduly constrain shareholder suffrage because of its possible ''umbrella'' effect (*i.e.,* it could be used to omit proposals that had only a vague relation to the subject matter of a prior proposal that received little shareholder support).[54] After considering public comment, the Commission determined not to adopt the proposed revision, noting that ''the potential drawbacks of the new provision appear to outweigh the prospective benefits.'' [55]

In 1982, the Commission again proposed the same revision considered in 1976 [56] and, in 1983, adopted the proposed revision, noting that ''this change is necessary to signal a clean break from the strict interpretive position applied to the existing provision.'' [57] As amended, the provision permitted the exclusion of proposals dealing with ''substantially the same subject matter'' as proposals submitted in prior years that received support below specified vote thresholds.

Commenters supporting the 1983 amendment viewed it as an appropriate response to counter the abuse of the shareholder proposal process by ''certain proponents who make minor changes in proposals each year so that they can keep raising the same issue despite the fact that other shareholders have indicated by their votes that they are not interested in that issue.'' [58] Commenters who opposed the change argued that the revision was too broad and that it could be used to exclude proposals that had only a vague relation to an earlier proposal. Noting these concerns, the Commission explained that, while ''interpretation of the new provision will continue to involve difficult subjective judgments, . . . those judgments will be based upon a consideration of the substantive concerns raised by a proposal rather than the specific language or actions proposed to deal with those concerns'' such that ''an improperly broad interpretation of the . . . rule will be avoided.'' [59]

The ''substantially the same subject matter'' test has been in place since 1983. However, the Commission has revisited the minimum vote thresholds necessary for resubmission under the provision from time to time [60] and increased the resubmission thresholds in 2020 (the ''2020 amendments'').[61] Prior to the 2020 amendments, Rule 14a–8(i)(12) required a proposal to receive at least: (i) 3 percent of the vote if previously voted on once; (ii) 6 percent of the vote if previously voted on twice; or (iii) 10 percent of the vote if previously voted on three or more times. The 2020 amendments increased the levels of support a shareholder proposal must receive to be eligible for resubmission at the same company's future shareholders' meetings from 3, 6, and 10 percent to 5, 15, and 25 percent, respectively. We continue to assess the impact of these amendments.

While the Commission did not otherwise propose changes to the wording of the rule in connection with the 2020 amendments, it did request comment on whether it should change the Rule 14a–8(i)(12) standard or its application, such as reverting to the pre-1983 ''substantially the same proposal'' standard. The six commenters who responded to the request for comment were largely supportive of narrowing the standard for exclusion if the Commission raised the resubmission thresholds.[62] For example, one commenter suggested that, if the 2020 amendments raised the resubmission thresholds, the Commission should consider whether to ''narrow the definition of 'Resubmissions' '' because ''the higher resubmission thresholds could expand the ability of a shareholder to preempt future proposals by submitting (intentionally or not) an unpopular idea that 'addresses substantially the same subject matter' as an idea that many shareholders support.'' [63] Similarly, another commenter noted that a revised standard focusing not on the '' 'substantive concerns' '' of similar proposals but rather on the '' 'specific language or actions proposed to deal with those concerns' '' would be helpful in order to ''allow different approaches to the same or a similar issue to be voiced and provided as options for shareholders to support.'' [64] The Commission did not adopt any changes to the applicable standard in response to these comments on the proposing release for the 2020 amendments.

When considering whether proposals deal with ''substantially the same subject matter,'' the staff has followed the standard the Commission articulated in 1983: whether the proposals share the same ''substantive concerns'' rather than the ''specific language or actions proposed to deal with those concerns.'' This determination of a proposal's ''substantive concerns'' can necessitate fact-intensive, case-by-case judgments in applying Rule 14a–8(i)(12) through the no-action letter process. In this regard, as with the ''substantial duplication'' test under Rule 14a–8(i)(11), delineating the ''substantive concerns'' of a proposal either too broadly or too narrowly may result in the under- or over-inclusion of proposals, respectively. Additionally, the staff has observed that proposals that address the same subject matter but call for different actions may receive significantly different shareholder votes, which could suggest that shareholders view such proposals as raising different issues.

We are concerned that the ''substantially the same subject matter'' test under Rule 14a–8(i)(12) may not accomplish its stated purpose because focusing on whether proposals share the same ''substantive concerns'' rather than ''the specific language or actions proposed to deal with those concerns'' may not, as the Commission initially had believed, avoid an ''improperly broad interpretation'' of the provision. In this regard, we share the concerns previously expressed by commentators that the ''substantially the same subject matter'' standard unduly constrains shareholder suffrage because of its potential ''umbrella'' effect—*i.e.,* that it could be used to exclude proposals that have only a vague relation, or are not sufficiently similar, to earlier proposals that failed to receive the necessary shareholder support. As a result, the current standard could discourage experimentation with new ideas, as it limits proponents' ability to modify their proposals to address a similar subject matter in subsequent years to build broader shareholder support, and also restricts other shareholders from presenting different or newer approaches to addressing the same issue.

[54] *See id.;* 1976 Adopting Release, *supra* note 19.

[55] *See* 1976 Adopting Release, *supra* note 19.

[56] *See* 1982 Proposing Release, *supra* note 28.

[57] *See* 1983 Adopting Release, *supra* note 17, at 38221.

[58] *See id.*

[59] *See id.*

[60] *See* Adoption of Amendments to Proxy Rules, Release No. 34–4979 (Jan. 6, 1954) [19 FR 246 (Jan. 14, 1954)]; 1983 Adopting Release, *supra* note 17; Proposals of Security Holders, Release No. 34–22625 (Nov. 14, 1985) [50 FR 48180 (Nov. 22, 1985)]; 1998 Adopting Release, *supra* note 10.

[61] *See* 2020 Adopting Release, *supra* note 11 (the ''2020 amendments'').

[62] *See* letters from Council of Institutional Investors dated January 30, 2020; James McRitchie dated February 2, 2020; Local Authority Pension Fund Forum dated February 3, 2020; New York City Comptroller dated February 3, 2020; New York State Comptroller dated February 3, 2020; Stewart Investors dated January 30, 2020.

[63] *See* letter from Council of Institutional Investors dated January 30, 2020.

[64] *See* letter from Local Authority Pension Fund Forum dated February 3, 2020.

2. Proposed Amendment

To address these concerns, we are proposing to revise the standard of what constitutes a resubmission under Rule 14a–8(i)(12) from a proposal that ''addresses substantially the same subject matter'' as a prior proposal to a proposal that ''substantially duplicates'' a prior proposal—the same standard that applies under current Rule 14a–8(i)(11), the duplication exclusion. The proposed amendments also would provide that, for purposes of Rule 14a–8(i)(12), a proposal ''substantially duplicates'' another proposal if it ''addresses the same subject matter and seeks the same objective by the same means.''

Under the proposed approach, in order to be excludable under the resubmission exclusion, a proposal must not only address the same subject matter as a prior proposal but also must seek the same objective by the same means. In other words, the standard for exclusion would focus on the specific objectives and means sought by a proposal with respect to a given subject matter (*i.e.,* the specific actions proposed to deal with a proposal's ''substantive concerns''). We anticipate that this approach may provide a more accurate indication of whether shareholders have already provided their views on a particular issue and the proposed means to address it.

To take an example, the staff previously had viewed the following proposals as addressing the same subject matter for purposes of the resubmission exclusion: (1) a proposal requesting that the board adopt a policy prohibiting the vesting of equity-based awards for senior executives due to a voluntary resignation to enter government service (a ''government service golden parachute''); and (2) a proposal requesting that the board prepare a report to shareholders regarding the vesting of such government service golden parachutes that identifies eligible senior executives and the estimated dollar value of each senior executive's government service golden parachute.[65] Under the proposed amendment to Rule 14a–8(i)(12), although these proposals concern the same subject matter (namely, government service golden parachutes for senior executives), exclusion would not be warranted because they do not seek the same objectives by the same means.

We note that, under the proposed revision to Rule 14a–8(i)(12), the previous proposal(s) and the current proposal need not be identical to warrant exclusion. In this regard, we do not propose to revert to the pre-1983 standard of ''substantially the same proposal'' for the same reason that prompted the Commission to abandon this standard in 1983—namely, the concern that proponents could alter a few words from a previously submitted proposal to evade exclusion of their proposals.[66] However, we seek public comment on whether it would be appropriate to return to the ''substantially the same proposal'' pre-1983 standard.

We believe that the proposed amendments would alleviate the potential ''umbrella'' effect of the resubmission exclusion by enabling proponents to make adjustments to their proposals to build broader support and also allow other proponents to put forth their own proposals offering different ways to address the same issue. Consequently, the proposed amendments would align more closely with the purpose of the exclusion, which is to avoid the continued consideration of ''proposals that have generated little interest when previously presented to the security holders,'' [67] by recognizing that proposals that address the same subject matter, or share the same substantive concerns, do not necessarily garner equivalent levels of shareholder interest and support. In this way, we anticipate that the proposed revisions would strike a more appropriate balance between effecting the purpose of the exclusion and preserving the ability of shareholders to engage with a company and other shareholders through the shareholder proposal process.

Although we recognize that the resubmission exclusion, as proposed to be amended, would continue to require a degree of fact-intensive judgment, we believe it would provide a clearer standard for exclusion, assist the staff in more efficiently reviewing and responding to no-action requests, and benefit shareholders and companies by promoting more consistent and predictable determinations regarding the exclusion of proposals. By providing greater certainty and transparency with respect to the standards to be applied under the rule, the proposed amendment would aid shareholder-proponents, in drafting their proposals, and companies, in determining whether a proposal may be excludable under the rule. Moreover, the proposed amendments would promote more consistent outcomes when comparing a given proposal against proposals submitted for the same shareholder meeting, for purposes of Rule 14a–8(i)(11), and against proposals considered at prior meetings, for purposes of Rule 14a–8(i)(12), in consideration of the similar objectives of these exclusions.

Request for Comment

9. Should we amend the resubmission exclusion, as proposed, to provide that a resubmission is a proposal that ''substantially duplicates'' a prior proposal, the same standard as under the duplication exclusion in Rule 14a–8(i)(11)? Should we amend the rule, as proposed, to specify that a proposal ''substantially duplicates'' another proposal if it ''addresses the same subject matter and seeks the same objective by the same means''? Should we instead maintain the current standard? Should we consider a different standard, such as the Commission's pre-1983 ''substantially the same proposal'' standard? Are there other approaches we should consider?

10. Would the proposed amendment benefit shareholder-proponents and companies by promoting more consistent and predictable determinations regarding application of the resubmission exclusion? What potential costs should we consider?

11. The proposed amendment seeks to strike a balance between the purpose of the resubmission exclusion to limit the consideration of proposals that do not garner significant shareholder support and the ability of shareholder-proponents to engage with a company and other shareholders through the shareholder proposal process, including by mitigating the potential ''umbrella'' effect of the resubmission exclusion. Are there other considerations we should take into account?

12. The proposed amendment would apply the same standard for exclusion when comparing a given proposal against proposals submitted for the same shareholder meeting, for purposes of the duplication exclusion in Rule 14a–8(i)(11), and against proposals considered at prior meetings, for purposes of the resubmission exclusion in Rule 14a–8(i)(12). Is this approach appropriate?

III. Economic Analysis

As discussed above, we are proposing modifications to three of the substantive bases for the exclusion of shareholder proposals under Rule 14a–8. We are mindful of the costs and benefits of these proposed amendments. The discussion below addresses the

[65] *See The Goldman Sachs Group, Inc.* (Jan. 10, 2017).

[66] *See* 1983 Adopting Release, *supra* note 17.

[67] *See* 1982 Proposing Release, *supra* note 28, at 47429.

potential economic effects of the proposed amendments, including the likely benefits and costs, as well as the effects on efficiency, competition, and capital formation.[68] We analyze the expected economic effects of the proposed amendments relative to the current baseline, which consists of both the current regulatory framework and the current practices relating to shareholder proposal submissions. Overall, we expect the proposed amendments to benefit companies and shareholder-proponents by providing standards that are easier to apply and result in determinations that are more predictable and consistent. To the extent that companies and shareholder-proponents modify their behavior in response to the proposed amendments, additional economic effects could include changes in the volume and characteristics of shareholder proposals submitted and included in companies' proxy statements.

Where possible, we have attempted to quantify the benefits, costs, and effects on efficiency, competition, and capital formation expected to result from the proposed amendments. In many cases, however, we are unable to quantify the economic effects because we lack information necessary to provide reasonable estimates. For example, we do not have data that would allow us to assess the extent to which companies and shareholder-proponents may change their behavior in response to the proposed amendments. We further note that even in cases where we have some data regarding certain economic effects, the quantification of these effects is particularly challenging due to the number of assumptions that we would need to make to estimate the benefits and costs of the proposed amendments. Where we are unable to quantify the economic effects of the proposed amendments, we provide a qualitative assessment of the potential effects and encourage commenters to provide data and information that would help quantify the benefits, costs, and potential impacts of the proposed amendments on efficiency, competition, and capital formation.

A. Affected Parties

The proposed amendments would affect all companies subject to the federal proxy rules that receive shareholder proposals, the proponents of these proposals, and non-proponent shareholders of these companies.[69] Companies that have a class of equity securities registered under Section 12 of the Exchange Act are subject to the federal proxy rules, including Rule 14a–8.[70] In addition, all management companies are subject to the federal proxy rules.[71] Finally, there are certain companies that voluntarily file proxy materials that could be affected to the extent that they receive shareholder proposals.

As of December 31, 2021, we estimate that there were 5,862 companies that had a class of securities registered under Section 12 of the Exchange Act (including 97 Business Development Companies (''BDCs'')).[72] This estimate represents an upper bound of the number of potentially affected companies because some of these companies may not file proxy materials or receive a shareholder proposal in a given year. Out of the 5,862 potentially affected companies mentioned above, 4,588 (78 percent) filed proxy materials with the Commission during calendar year 2021.[73] In addition, as of December 31, 2021, there were 33 companies that voluntarily filed proxy materials.[74]

As of December 31, 2021, there were 2,034 management companies[75] that were subject to the federal proxy rules, of which 625 (31 percent) reported to have submitted matters for their security holders' vote during the reporting period.[76] However, we estimate that 944 unique entities associated with management companies[77] filed proxy materials with the Commission during calendar year 2021 on 569 unique forms.[78]

Proponents of shareholder proposals also could be affected by the proposed rule amendments. We estimate that there were approximately 176 proponents—66 individual proponents

[68] Section 3(f) of the Exchange Act [17 U.S.C. 78c(f)] and Section 2(c) of the Investment Company Act [15 U.S.C. 80a–2(c)] require the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Further, Section 23(a)(2) of the Exchange Act [17 U.S.C. 78w(a)(2)] requires the Commission, when making rules under the Exchange Act, to consider the impact that the rules would have on competition, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

[69] The proposed amendments could also have indirect effects on providers of administrative and advisory services related to proxy solicitation and shareholder voting.

[70] Foreign private issuers are exempt from the federal proxy rules under Exchange Act Rule 3a12–3(b). *See supra* note 1.

[71] 17 CFR 270.20a–1 (''Rule 20a–1'') under the Investment Company Act [15 U.S.C. 80a–20(a)] requires management companies to comply with regulations adopted pursuant to Section 14(a) of the Exchange Act that would be applicable to a proxy solicitation if it were made in respect of a security registered pursuant to Section 12 of the Exchange Act. ''Management company'' means any investment company other than a face-amount certificate company or a unit investment trust. *See* 15 U.S.C. 80a–4.

[72] We estimate the number of companies with a class of securities registered under Section 12 of the Exchange Act by reviewing all filers, by unique Central Index Key (CIK), of Forms 10–K and amendments filed during calendar year 2021.

[73] The proxy materials we consider in our analysis are materials filed via EDGAR under submission types DEF 14A, DEF 14C, DEFA14A, DEFC14A, DEFM14A, DEFM14C, DEFR14A, DEFR14C, DFAN14A, PRE 14A, PRE 14C, PREC14A, PREM14A, PREM14C, PRER14A, and PRER14C.

[74] We identify companies that voluntarily file proxy materials as companies reporting pursuant to Section 15(d) of the Exchange Act but not registered under Section 12(b) or Section 12(g) of the Exchange Act and foreign private issuers that filed any proxy materials during calendar year 2021 with the Commission. *See supra* note 73 for details on the proxy materials we consider for this analysis.

[75] We estimate the number of unique management companies by reviewing all Forms N–CEN of companies active through December 2021 received by the Commission as of March 15, 2022. These 2,034 management companies were associated with the following funds: (i) 11,780 open-end funds, out of which 2,398 were Exchange Traded Funds (''ETFs'') registered as open-end funds or open-end funds that had an ETF share class; (ii) 651 closed-end funds; and (iii) 14 variable annuity separate accounts registered as management investment companies. Open-end funds are series of trusts registered on Form N–1A. Closed-end funds are trusts registered on Form N–2. Variable annuity separate accounts registered as management companies are trusts registered on Form N–3.

[76] We estimate the number of unique management companies that submitted matters for their security holders' vote by reviewing Item B.10 in all Forms N–CEN of management companies active through December 2021 received by the Commission as of March 15, 2022. These 625 management companies were associated with the following funds: (i) 2,481 open-end funds, out of which 278 were ETFs registered as open-end funds or open-end funds that had an ETF share class; (ii) 436 closed-end funds; and (iii) no variable annuity separate accounts.

[77] We estimate the number of unique entities associated with management companies by reviewing unique CIKs associated with materials filed via EDGAR under submission types DEF 14A, DEF 14C, DEFA14A, DEFC14A, DEFM14A, DEFM14C, DEFR14A, DEFR14C, DFAN14A, N–14, PRE 14A, PRE 14C, PREC14A, PREM14A, PREM14C, PRER14A, and PRER14C. Form N–14 can be a registration statement and/or proxy statement. We manually review all Forms N–14 filed during calendar year 2021 with the Commission and we exclude from our estimates Forms N–14 that are exclusively registration statements. Because management companies could comprise funds and proxy materials could be filed with the Commission at the management company, fund family, a combination of funds or fund families, or individual fund level, the number of entities associated with management companies that filed proxy materials during calendar year 2021 exceeds that number of management companies that submitted matters for their security holders' vote. *See supra* note 76.

[78] We estimate the number of unique proxy filings by reviewing the unique accession numbers of proxy materials filed by entities associated with management companies. Because multiple entities of management companies, as identified by unique CIK, could appear on the same proxy form, the number of proxy forms is lower than the number of unique entities estimated above. *See supra* note 77.

and 110 institutional proponents—that submitted a shareholder proposal to be included in a company's proxy statement as a lead proponent during calendar year 2021.[79] Because many proponents may not submit a shareholder proposal every year, our estimate based solely on 2021 submissions could be undercounting the number of proponents that could be affected by the proposed amendments. For example, there were approximately 586 unique lead proponents—272 individual proponents and 314 institutional proponents—that submitted a shareholder proposal to be included in a company's proxy statement for annual and special meetings from 2017 through 2021.[80] Non-proponent shareholders of companies also could be indirectly affected by the proposed rule amendments. According to a recent study based on the 2019 Survey of Consumer Finances, approximately 68 million households owned publicly traded stock directly or indirectly (through other investment instruments).[81] Moreover, based on an academic study using U.S. retail shareholder voting data from Broadridge covering nearly all regular and special meetings during the three years 2015 to 2017, there were approximately 46 million retail accounts that directly held shares of U.S. public companies.[82] Our analysis of institutional investor data also shows that there were 6,968 unique institutional investors during 2021.[83]

B. Baseline

The baseline against which the costs, benefits, and the impact on efficiency, competition, and capital formation of the proposed amendments are measured consists of the current regulatory framework, including the current staff no-action positions with respect to Rule 14a–8 and the current practices of companies and shareholders related to shareholder proposals.

1. Regulatory Framework

State laws, company bylaws and other governing documents, and the federal securities laws jointly govern the shareholder proposal process. Rule 14a–8 sets forth procedural and substantive bases upon which a company may exclude a shareholder proposal from its proxy statement.[84] Under Rule 14a–8(i)(10), the substantial implementation exclusion, companies may exclude a shareholder proposal that ''the company has already substantially implemented.'' [85] Under Rule 14a–8(i)(11), the duplication exclusion, companies may exclude a shareholder proposal that ''substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting.'' [86] Under Rule 14a–8(i)(12), the resubmission exclusion, companies may exclude a shareholder proposal that ''addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years'' if the matter was voted on at least once in the last three years and did not receive: (i) 5 percent of the vote if previously voted on once; (ii) 15 percent of the vote if previously voted on twice; or (iii) 25 percent of the vote if previously voted on three or more times.[87]

When a company intends to exclude a shareholder proposal from its proxy materials, it must advise the Commission staff of its intention to do so and will generally submit a no-action request seeking the staff's concurrence that it would not recommend enforcement action to the Commission if the company excludes the proposal under one or more of the bases for exclusion in Rule 14a–8.[88] Generally, if the staff grants a no-action request, a company will not include the shareholder proposal in its proxy statement.[89] In some instances, a company may negotiate with a proposal's proponent for the withdrawal of the proposal during or after the no-action process. In any event, the staff's no-action position is not legally binding and the matter ultimately may be resolved by a federal district court.[90]

As new and developing issues arise with respect to companies and shareholders, shareholder proposals may demonstrate different trends, and the staff's review under the substantive bases for exclusion of Rule 14a–8 may adjust in response to such trends. As a result, companies and shareholders may find it difficult to apply past staff no-action positions to predict whether a proposal should be included in a company's proxy statement. For example, several commenters have expressed concerns around the variation and potential unpredictability of staff positions regarding the substantial implementation exclusion.[91] More broadly, stock price movements

[79] Data is retrieved from the FactSet SharkRepellent Proxy Proposal dataset, *infra* note 96. This data allows for the unique identification of a sole lead proponent of each proposal, but not the unique identification of all co-proponents across proposals. We estimate based on information provided in FactSet's ''proposal notes,'' that approximately 11 percent of proposals in 2021 were submitted by multiple proponents and among the proposals that were submitted by multiple proponents, the average (median) number of proponents was 2.7 (3). As a result, our estimated number of proponents should be interpreted as a lower bound on the total number of unique shareholder-proponents.

[80] *See id.*

[81] *See* Neil Bhutta et al., *Changes in U.S. Family Finances from 2016 to 2019: Evidence from the Survey of Consumer Finances,* 106 Fed. Res. Bull. 1, 18–19 (2020), *available at https://www.federalreserve.gov/publications/files/scf20.pdf* (reporting that 52.6 percent of the 128.6 million families represented owned stock in publicly-traded companies). Indirect holdings of publicly-traded stock are those in pooled investment funds, retirement accounts, and other managed assets. The same study estimates that approximately 19 million households (15 percent) held publicly traded stock directly in 2019. This is a triennial survey, and the latest data available as of this time is from the 2019 survey.

[82] *See* Alon Brav et al., *Retail shareholder participation in the proxy process: Monitoring, engagement, and voting,* 144 J. of Fin. Econ. 492, 497 (2022). The number of retail accounts is an approximation of the number of retail investors because each retail investor can hold multiple accounts and multiple retail investors can hold a single account. Further, this data only covers a subset of all retail accounts.

[83] Data is retrieved from the Thomson/Refinitiv Institutional (13F) Holdings dataset. Unique institutional investors are composed of filers with a unique Manager Number that filed a Form 13F at least for one quarter during calendar year 2021 with the Commission. The estimated number of institutional investors is a lower bound of the actual number of institutional investors because only institutional investment managers that exercise discretion over $100 million or more in Section 13(f) securities on the last trading day of any month of any calendar year must file Form 13F with the Commission. See 17 CFR 240.13f–1.

[84] *See supra* note 2.

[85] *See supra* note 16.

[86] *See supra* note 18.

[87] *See supra* note 20. Rule 14a–8(i)(12) was amended in 2020 and these resubmission thresholds only apply to proposals submitted for meetings beginning in 2022. *See* 2020 Adopting Release, *supra* note 11. Prior to the 2020 amendments, Rule 14a–8(i)(12) required a proposal to receive at least: (i) 3 percent of the vote if previously voted on once; (ii) 6 percent of the vote if previously voted on twice; or (iii) 10 percent of the vote if previously voted on three or more times. *See id.*

[88] *See* 17 CFR 240.14a–8(j)(1). A shareholder proposal may be omitted without submitting a no-action request. In particular, a company may give notice to the Commission that it will exclude the proposal without submitting a no-action request, perhaps if it intends to seek a determination by a court. However, this practice is rare and virtually all proposal exclusion notifications come in the form of no-action requests.

[89] Rarely, a shareholder proposal may be included in a company's proxy and voted on despite Commission staff having granted a company's no-action request regarding exclusion of the proposal. This was the case for four proposals (approximately 0.1 percent) submitted for annual meetings held from 2017 through 2021. *See infra* note 97.

[90] *See generally* Thomas Lee Hazen, Treatise on the Law of Securities Regulation, § 10:27 (7th ed. 2016). *See also supra* note 88.

[91] *See supra* note 35.

following the issuance of staff no-action letter responses suggest that staff responses resolve some uncertainty about whether a proposal will be included in a company's proxy statement.[92] Yet, even after the staff's position is disclosed, uncertainty could remain as to whether a court would agree with the staff's interpretation of an exclusion under Rule 14a–8.[93] Uncertainty regarding the applicability of any individual basis for exclusion to any particular proposal may contribute to companies' common practice of asserting multiple bases for exclusion in their no-action requests under Rule 14a–8.[94]

2. Practices Related to Proposal Submissions

In this section, we describe practices around shareholder proposal submissions to understand the baseline against which we compare the effects of the proposed amendments, informing the analysis of the potential effects of the proposed amendments to Rule 14a–8 in later sections. We note that the current practices around shareholder proposals are likely to differ from prior years because the 2020 amendments to Rule 14a–8, which relate to certain procedural requirements and the resubmission exclusion under Rule 14a–8(i)(12), became effective for proposals submitted for annual or special meetings to be held on or after January 1, 2022.[95] We expect the 2020 amendments to affect the number of proposals submitted and included in companies' proxy statements in 2022 and the subsequent seasons relative to prior years. In addition, as the characteristics of shareholder proposals vary across years, so do the outcomes of the staff's no-action positions based on the limited subset of proposals that the staff reviews through the no-action letter process. Further, Commission and staff interpretations of the procedural and substantive bases for exclusion under Rule 14a–8 have varied over time, as discussed above in Sections II.A.1, II.B.1, and II.C.1. As a result, the percentage of proposals submitted but not included in companies' proxy statements can vary considerably from one proxy season to the next, limiting our ability to draw conclusions regarding the current practices related to shareholder proposal exclusions based on data from an individual proxy season.

Our data[96] on shareholder proposals contains proposals that were either (i) included in companies' proxy statements and voted on by shareholders; (ii) omitted from companies' proxy statements through the staff no-action process; or (iii) submitted by the proponents but withdrawn prior to a vote, where the information about the proposal is publicly available.[97] Throughout the analysis, we disaggregate statistics by company size, proponent types, and proposal topics to understand how the practices related to shareholder proposals have varied across these categories.

We find that 392 shareholder proposals were submitted to be included in companies' proxy statements for meetings held from January 1, 2022 through May 20, 2022, a decrease of approximately 10 percent relative to proposals submitted for meetings held in the same period in 2021.[98] Of these 392 submissions, the majority of proposals (80 percent) were included in companies' proxy statements and voted on, while 11 percent were omitted following a no-action letter issued by the Commission staff and 9 percent were withdrawn by the proponent prior to the applicable meeting.[99] The majority (85 percent) of proposals were submitted for annual and special meetings of S&P 500 companies. Further, the majority of proposals submitted were related to governance issues (53 percent), followed by those on social (33 percent) and environmental (13 percent) issues.[100] We also estimate that 42 percent of proposals were submitted by individual proponents while 49 percent were submitted by institutional proponents.[101] Lastly, the average

[92] *See, e.g.,* John G. Matsusaka et al., *Can Shareholder Proposals Hurt Shareholders? Evidence from Securities and Exchange Commission No-Action-Letter Decisions.* 64 J. of L. and Econ. 107 (2021) (finding a statistically significant mean cumulative abnormal return, the difference between the actual return and the expected return, ranging between 0.11 percent and 0.58 percent following an issuance of a staff no-action letter concurring in a company's exclusion of a shareholder proposal under Rule 14a–8). Because proposal details and a company's request to exclude it are publicly available on the Commission's website in advance of the staff no-action response, we would not expect to see any price reactions if staff no-action responses were fully predictable.

[93] In some past instances, courts have disagreed with the staff's interpretation of bases for exclusion under Rule 14a–8. *See, e.g., Trinity Wall Street* v. *Wal-Mart Stores, Inc.*, 792 F.3d 323 (3d Cir. 2015).

[94] Using data from the 2021, 2020 and 2019 proxy seasons, we estimate that in approximately half (one third) of no-action requests asserting the substantial implementation or duplication (resubmission) basis for exclusion, companies asserted at least one other basis under Rule 14a–8.

[95] The 2020 amendments to Rule 14a–8, which apply to shareholder proposals submitted for annual and special meetings held on or after January 1, 2022, included changes to the ownership requirements to be eligible to submit a proposal, increases in the resubmission voting thresholds, and certain other procedural requirement changes. *See* 2020 Adopting Release, *supra* note 11. These amendments also included a transition period that allows shareholders meeting specified conditions to rely on prior ownership thresholds to demonstrate eligibility to submit a proposal for an annual or special meeting to be held prior to January 1, 2023. *See id.* at 70263.

[96] Unless stated otherwise, all data in this section is retrieved from the FactSet SharkRepellent Proxy Proposal dataset (accessed on June 4, 2022). Dataset coverage includes over 4,000 U.S.-incorporated public companies and some foreign-incorporated companies. FactSet extracts and processes proxy data from regulatory filings and press releases, as well as through web-monitoring and in rare instances, direct engagement with companies and shareholder-proponents. We exclude from our analysis shareholder proposals that are not subject to Rule 14a–8, such as proposals related to proxy contests and other proposals appearing in dissident shareholders' proxy material, proposals that were raised from the floor of the annual or special meetings and were not submitted to appear in the companies' proxy statements, and proposals submitted for a vote at meetings of foreign companies that are not subject to federal proxy rules.

[97] Our data is comprehensive with respect to shareholder proposals that appear in companies' proxy statements and those for which the company submitted a no-action request to Commission staff. However, proposal submissions counts in our analysis represent a lower bound on all shareholder proposal submissions because this data may not include all shareholder proposals that were withdrawn by proponents. In particular, if a submitted but withdrawn proposal did not appear in a proxy statement, a press release, or a company's no-action request, it may not be included in the data we use for the analysis in this section.

[98] Using data from previous proxy seasons, we estimate that proposals submitted for meetings held from January 1, 2022 through May 20, 2022 will account for approximately 60 percent of all proposals that will be submitted during the 2022 proxy season. We also note that some effects of the 2020 amendments on the number of proposals submitted and included in companies' proxy statements may not yet be realized. *See supra* note 95.

[99] *See supra* note 97, which discusses the potential underestimation of the volume of withdrawn proposals in our analysis. In this analysis, we classify a shareholder proposal that was included in a company's proxy statement but was not voted on in the annual or special meeting as a withdrawn proposal.

[100] We grouped proposals into governance, social, and environmental categories based on FactSet's proposal subcategory definitions. The governance group is mostly comprised of shareholder proposals related to shareholder rights and takeover defenses, board structure and independence, and executive compensation. Social proposals include, among others, proposals related to political contributions and lobbying disclosure, labor and health issues, human rights, and board diversity. Environmental proposals include, among others, proposals related to sustainability, greenhouse gas emissions, climate change, community/environmental impact, and renewable energy.

[101] Throughout our analysis, ''individual'' proponents are comprised of retail investors. ''Institutional'' proponents are comprised of asset managers, unions, pension funds, religious organizations, nonprofit organizations, and other organizations. The data is missing lead proponents' identity for 36 (9 percent) of shareholder proposals over this period which is presumably because companies are not required to disclose the identity

Continued

shareholder support for voted proposals during this period was 30 percent of the total number of votes cast and the median shareholder support was 32 percent, with approximately 10 percent of proposals receiving majority support.

Changes to the resubmission voting thresholds decreased the fraction of proposals voted on in 2021 that were eligible to be resubmitted for meetings held in 2022. We find that overall, 76 percent of voted proposals that did not receive majority support were eligible for a resubmission in 2022, a decrease from 89 percent of proposals that were eligible in the prior year. Governance and social proposals were more likely to be eligible for resubmission (77 percent of voted proposals that did not receive majority support) than environmental proposals (61 percent of voted proposals that did not receive majority support). We also find that proposals submitted by individual investors were more likely to be eligible for resubmission (81 percent) than those submitted by institutions (74 percent). Of the 392 shareholder proposals submitted to be included in companies' proxy statements for meetings held from January 1, 2022 through May 20, 2022, 258 (66 percent) were a first submission, 55 (14 percent) were a second submission, and the remaining 79 (20 percent) were a third or subsequent submission.[102]

We also note that from October 15, 2021 through May 10, 2022,[103] the staff received 87 no-action requests asserting the substantial implementation exclusion (37 percent of all no-action requests over this period) and concurred in the exclusion of 11 percent of these requests on the basis of the substantial implementation exclusion. In the same period, the staff received 22 no-action requests asserting the duplication exclusion (9 percent of all no-action requests over this period) and concurred in the exclusion of 18 percent of these requests on the basis of the duplication exclusion. Lastly, the staff received 11 no-action requests asserting the resubmission exclusion (5 percent of all no-action requests over this period) and concurred in the exclusion of 45 percent of these requests on the basis of the resubmission exclusion.

Because the 2022 proxy season is ongoing and, as a result, the information on current practices related to shareholder proposals is incomplete, we supplement the analysis above with information about shareholder proposals submitted for annual and special meetings held from 2017 through 2021.[104] We combine statistics on shareholder proposals submitted over a period of five years because the number and characteristics of shareholder proposal submissions can vary from one year to the next. A total of 3,560 proposals were submitted for inclusion in companies' proxy materials for annual and special meetings held from 2017 through 2021, an average of approximately 712 proposals submitted each year (*see* Table 2 [105]). Of the submissions, the majority of proposals (66 percent) were included in companies' proxy statements and voted on, while 20 percent were omitted following a no-action letter issued by the Commission staff, and 14 percent were withdrawn by the proponent prior to the applicable meeting.[106] Shareholder proposal activity in this five-year period was concentrated among the S&P 500 companies, with each company in the S&P 500 index receiving on average a single shareholder proposal each year.[107] The majority of proposals submitted were related to governance issues (54 percent), followed by those on social (31 percent) and environmental (11 percent) issues.[108] Lastly, slightly less than half of proposals (46 percent) were submitted by individual proponents,[109] but these proposals were more likely to be omitted and less likely to be withdrawn than those submitted by institutional proponents.[110]

of the proponent in proxy statements. *See* 17 CFR 240.14a–8(l).

[102] We categorize a proposal as a first submission if it has not been voted on in the preceding three calendar years. A proposal is categorized as a second (third or subsequent) submission if it has been voted on within the preceding three calendar years and it has been voted on once (two or more times) in the past five calendar years. Conducting any systematic analysis on proposal resubmissions across multiple years requires employing a methodology for determining whether multiple proposals deal with ''substantially the same subject matter.'' For this analysis, we relied on FactSet's standardized proposal descriptions and the text of the proposal. In particular, we classified a proposal as a resubmission if the prior proposal had the same FactSet-assigned description and the text of the prior proposal was not substantially dissimilar or if the prior proposal had a different FactSet-assigned description but the text of the prior proposal was almost identical. Textual similarity was computed via a probabilistic string-matching algorithm. Prior research on shareholder proposals similarly has used shareholder proposal descriptions to identify proposals as resubmissions. *See* Brandon Whitehill, *Clearing the Bar, Shareholder Proposals and Resubmission Thresholds,* Council of Institutional Investors (Nov. 2018), *available at https://docs.wixstatic.com/ugd/72d47f_092014c240614a1b9454629039d1c649.pdf.* It is important to note that our methodology for classifying a proposal as a resubmission of a previously submitted proposal may not always align with what the staff or the courts might view as a proposal on ''substantially the same subject matter.'' While using a different textual comparison methodology may result in a change in the number and characteristics of proposals classified as resubmissions in our analysis, we have no reason to believe that it would yield materially different qualitative conclusions regarding proposal resubmissions over the five-year period we consider.

[103] Using data from previous proxy seasons, we estimate that no-action requests received up to May 10, 2022 will account for approximately 90 percent of all no-action requests the staff will receive for the 2022 proxy season.

[104] FactSet data includes seven shareholder proposals submitted for six annual meetings during the 2017–2021 period that were cancelled. We exclude from our analysis two proposals from two cancelled meetings because identical proposals were included in proxy statements for rescheduled annual meetings to avoid double-counting the same proposal. We classify the remaining five proposals as withdrawn because they were not resubmitted for the companies' subsequent annual meetings.

[105] The percentages in parentheses in each column of the table represent percentages of the total number of proposals in the first row of each column.

[106] *See supra* note 97.

[107] We note that the volume of shareholder proposal submission is not uniform across companies. Approximately half of S&P 500 companies received no shareholder proposals over the five-year period, while five percent received more than four proposals on average per year. We also estimate that approximately two percent of shareholder proposals were submitted to management companies.

[108] *See supra* note 100 for a description of how we grouped proposals into governance, social, and environmental categories. There are 130 (four percent) shareholder proposals submitted over the 2017–2021 period that we classify as neither governance, social, or environmental. These proposals include proposals related to returning capital to shareholder (in the form of dividends or share repurchases), asset divestitures, fund-specific issues, and other miscellaneous issues. Because our data includes shareholder proposals that are categorized as neither governance, social, nor environmental, the percentages in the Proposal Topic rows of Table 2 do not sum up to 100 percent.

[109] *See supra* note 101 for a description of how we categorized proponent types. The data is missing lead proponents' identity for 238 (7 percent) of shareholder proposals over the 2017–2021 period. Because proponent identity is missing for some proposals in our data, the percentages in the Proponent Type rows of Table 2 do not sum up to 100 percent.

[110] We note that the higher withdrawal likelihood for proposals submitted by institutional shareholder-proponents could be due to these shareholders having more direct channels of communication and engagement and influence with companies than individual investors. *See, e.g.,* Eugene Soltes et al., *What Else do Shareholders Want? Shareholder Proposals Contested by Firm Management* (Harv. Bus. Sch., Working Paper, July 14, 2017), *https://ssrn.com/abstract=2771114* (finding that the amount of shareholder ownership of shares is positively associated with the probability that a proposal is withdrawn, which is consistent with the idea that large shareholders ''are more influential and are more likely to have dialogue with managers that would facilitate implementation of their proposal prior to a shareholder vote'') (''Soltes et al. (2017)'').

TABLE 2—SHAREHOLDER PROPOSAL SUBMISSIONS BY STATUS, 2017–2021

Proposal status	Voted on	Omitted	Withdrawn	Total
Number	2,362	696	502	3,560
Company Size:				
S&P 500	1,762 (75%)	543 (78%)	378 (75%)	2,683 (75%)
All Other	600 (25%)	153 (22%)	124 (25%)	877 (25%)
Proposal Topic:				
Governance	1,440 (61%)	362 (52%)	133 (26%)	1,935 (54%)
Social	669 (28%)	200 (29%)	240 (48%)	1,109 (31%)
Environmental	208 (9%)	73 (10%)	105 (21%)	386 (11%)
Proponent Type:				
Institution	1,058 (45%)	251 (36%)	373 (75%)	1,682 (47%)
Individual	1,090 (46%)	435 (63%)	115 (23%)	1,640 (46%)

Source: FactSet SharkRepellent Proxy Proposals.

The counts of omitted proposals in Table 2 above represent proposals excluded from companies' proxy statements following a no-action letter issued by the Commission staff under any of the procedural or substantive bases in Rule 14a–8. Only a subset of these omitted proposals were excluded due to the substantial implementation, duplication, or resubmission exclusions. Based on data in Table 1 above, companies asserted the substantial implementation, duplication, and resubmission exclusion in approximately 39 percent, five percent, and one percent, respectively, of the no-action requests during the 2021, 2020, and 2019 proxy seasons. The staff concurred in the exclusion in 42 percent, 38 percent, and 33 percent of these no-action requests on the basis of the substantial implementation, duplication, and resubmission exclusion, respectively. We also note that there was variation across the 2021, 2020, and 2019 proxy seasons with respect to companies' likelihood of asserting the substantial implementation, duplication, and resubmission exclusions and the staff's likelihood of concurring in those exclusions. For example, relative to the prior two seasons, during the 2021 proxy season, companies were more likely to assert the substantial implementation exclusion, but the staff concurred in a lower number of these requests.[111]

Table 3 summarizes data on voting support across proposal topics and proponent types. The average (median) shareholder support for voted proposals over the five-year sample period was 33 (32) percent of the total number of votes cast, with approximately 15 percent of proposals receiving majority support. Voting support varied across proposal topics and proponent types. In particular, governance proposals received higher shareholder support on average and were more likely to be supported by the majority of voting shareholders than social and environmental proposals. In addition, proposals submitted by individual proponents received higher shareholder support on average and were more likely to be supported by the majority of voting shareholders than proposals submitted by institutional proponents.[112]

TABLE 3—SHAREHOLDER PROPOSAL VOTING SUPPORT, 2017–2021

	Votes cast in favor		Proposals with majority support (%)
	Average (%)	Median (%)	
All Proposals	33	32	15
Proposal Topic:			
Governance	36	34	18
Social	27	27	8
Environmental	31	29	14
Proponent Type:			
Institution	31	29	14
Individual	35	35	16

Source: FactSet SharkRepellent Proxy Proposals.

Out of the 3,560 shareholder proposals in our data, 2,091 (59 percent) were a first submission, 578 (16 percent) were a second submission, and the remaining 891 (25 percent) were a third or subsequent submission (*see* Table 4 [113] below).[114] While companies in the S&P 500 index received 75 percent of all shareholder proposals, they received a higher than proportional percentage of proposals that were resubmitted, receiving 78 and 91 percent of all

[111] During the 2021 proxy season, approximately 41 percent of no-action requests asserted the substantial implementation exclusion, as compared to 38 percent and 37 percent in the 2020 and the 2019 seasons, respectively. The staff concurred in approximately 33 percent of no-action requests that asserted the substantial implementation exclusion on the basis of the substantial implementation during the 2021 proxy season, as compared to 50 percent and 45 percent during the 2020 and the 2019 seasons, respectively.

[112] Differences in the types of proposals submitted by individual and institutional shareholder-proponents could be driving the differences in the voting support across these two groups. For example, we find that individual shareholder-proponents submitted the majority (70 percent) of voted governance proposals over the five-year period, while institutional shareholder-proponents submitted the majority (80 percent) of voted social and environmental proposals.

[113] The percentages in parentheses in each column of the table represent percentages of the total number of proposals in the first row of each column.

[114] *See supra* note 102 for a description of our methodology regarding resubmitted proposals.

second and third or subsequent submissions, respectively. Proposals related to governance issues accounted for 56 percent of initial and second submissions, but a lower percentage (49 percent) of third or subsequent submissions. Proposals related to environmental and social issues accounted for a higher than proportional percentage of third or subsequent submissions. First and second submissions were close to evenly split across individual and institutional proponents, but third or subsequent submissions were more likely to have been submitted by institutional proponents.

TABLE 4—SHAREHOLDER PROPOSALS BY NUMBER OF SUBMISSIONS, 2017–2021

Submission No.	First	Second	Third or subsequent	Total
Number	2,091	578	891	3,560
Company Size:				
S&P 500	1,423 (68%)	453 (78%)	807 (91%)	2,683 (75%)
All Other	668 (32%)	125 (22%)	84 (9%)	877 (25%)
Proposal Topic:				
Governance	1,180 (56%)	322 (56%)	433 (49%)	1,935 (54%)
Social	606 (29%)	187 (32%)	316 (35%)	1,109 (31%)
Environmental	187 (9%)	59 (10%)	14 (16%)	386 (11%)
Proponent Type:				
Institution	987 (47%)	267 (46%)	428 (48%)	1,682 (47%)
Individual	989 (47%)	270 (47%)	381 (43%)	1,640 (46%)

Source: FactSet SharkRepellent Proxy Proposals.

We next analyze whether shareholder-proponents choose to resubmit proposals that are eligible to be resubmitted for subsequent meetings (*see* Table 5 below).[115] For this analysis, we consider all proposals that were voted on during 2017–2020,[116] but received less than majority support because passing proposals are more likely to be implemented [117] by companies, resulting in reduced incentives for shareholder-proponents to resubmit the proposal.[118] There were 1,641 of these shareholder proposals.[119] While the vast majority (90 percent) of voted shareholder proposals during 2017–2020 were eligible to be resubmitted in the following year, less than half (48 percent) of eligible proposals were actually resubmitted. We find that shareholder proposals submitted to companies in the S&P 500 index were more likely to be resubmitted than those submitted to companies outside of the S&P 500 index. Despite being the most likely to be eligible for resubmission among the three proposal topics groups, governance proposals were least likely to be resubmitted. We also find that shareholders' propensity to resubmit previously voted proposals was correlated with the voting support the proposal has previously received. In particular, comparing between shareholder proposals that received above and below 20 percent voting support and were eligible to be resubmitted in the following year, proposals with prior support above 20 percent were 25 percent more likely to be resubmitted than proposals with prior support below 20 percent. Lastly, because shareholder-proponents were relatively unlikely to resubmit proposals that received voting support below the specified vote thresholds in Rule 14a–8(i)(12), companies attempted to exclude proposals asserting the resubmission exclusion in only a few instances over this period (*see* Table 1 above).[120]

TABLE 5—PROPOSALS ELIGIBLE FOR RESUBMISSION AND RESUBMITTED, 2017–2020

	Number	% Eligible	% Resubmitted if eligible
Total	1,641	90	48
Company Size:			
S&P 500	1,286	90	52
All Other	355	92	31
Proposal Topic:			
Governance	936	94	43
Social	518	86	58

[115] Under Rule 14a–8(i)(12), a future proposal addressing ''substantially the same subject matter'' as a voted proposal is considered a resubmission if it is submitted for a meeting during the three years following the most recent vote. However, when estimating the likelihood that a proposal is resubmitted, we restrict the analysis above to proposals resubmitted in the subsequent year to avoid introducing a truncation bias in our analysis because we do not observe whether more recent proposals are resubmitted in each of the subsequent three years. As a result, estimates in Table 5 may underestimate the percentage of eligible proposals that may eventually be resubmitted.

[116] We restrict our sample to proposals submitted for 2017–2020 meetings and analyze whether they were resubmitted in the following year using data from 2018–2021 meetings for two reasons. First, because resubmission thresholds were amended in 2020, we have to apply different thresholds to determine proposal eligibility for proposals submitted to meetings before and after 2022. *See supra* note 87. Second, because the 2022 proxy season is ongoing, we have limited data on proposals voted on during 2021 and resubmitted for 2022 meetings. We include a separate analysis of eligibility and resubmission likelihood for 2021 shareholder proposals in Section III.B.2.b below.

[117] *See* 2020 Adopting Release, *supra* note 11, at 70286 n. 451.

[118] Using shareholder proposals voted on during 2017–2020 annual and special meetings, we find that only 13 percent of proposals garnering majority support were resubmitted in the following year.

[119] We estimate that 2,869 shareholder proposals were submitted for annual and special meetings held from 2017 through 2020, 1,897 (66 percent of submitted proposals) were voted on, and 256 (13 percent of voted proposals) received majority support.

[120] We estimate that of all of the proposals that were voted on during the 2017–2020 period and resubmitted in the following year, only 4 percent were excludable because their prior voting support was below the voting thresholds specified in Rule 14a–8(i)(12).

TABLE 5—PROPOSALS ELIGIBLE FOR RESUBMISSION AND RESUBMITTED, 2017–2020—Continued

	Number	% Eligible	% Resubmitted if eligible
Environmental	155	88	47
Proponent Type:			
Institution	790	89	48
Individual	732	92	46

Source: FactSet SharkRepellent Proxy Proposals.

C. Potential Costs and Benefits

Below we discuss the potential economic effects of the proposed amendments. Section III.C.1 discusses economic considerations relevant to shareholder proposals generally, while the remaining three sections discuss the economic effects related to the proposed amendments to Rule 14a–8(i)(10), Rule 14a–8(i)(11), and Rule 14a–8(i)(12), respectively.

1. General Economic Considerations Relevant to Shareholder Proposals

In this section, we describe the general economic considerations related to the shareholder proposal process. The value of including a shareholder proposal in a company's proxy statement for shareholder consideration and vote at a meeting depends fundamentally on the tradeoff between the potential for improving a company's future performance and the costs associated with the submission and consideration of a shareholder proposal borne by the company and its non-proponent shareholders.[121] A shareholder proposal could improve a company's performance because it could motivate a value-enhancing corporate policy change,[122] limit insiders' entrenchment,[123] and provide management with information about the views of shareholders.[124] The value of shareholder proposals is limited by the extent to which shareholders participate in the voting process and the extent to which management implements proposals with broad shareholder support. In this regard, we note that shareholder proposals typically are non-binding on the company, even if they are approved by a shareholder vote. Our economic analysis does not speak to whether any particular shareholder proposal is value-enhancing, whether the proposed amendments would result in the inclusion of value-enhancing proposals, or whether the proposed amendments would have a disproportionate effect on proposals that are more or less value-enhancing.

There are significant methodological and empirical challenges to measuring the value of including a shareholder proposal in a company's proxy statement and thus any potential benefits that may result from the inclusion of additional shareholder proposals in the proxy statement. For example, it is often difficult to isolate the effect of a singular shareholder proposal on a company's stock price from the effects of other items that are contemporaneously considered and voted on at a shareholder meeting or from the effects of direct engagement between shareholders and management. In addition, stock price changes following a proposal submission or vote may capture various effects such as signaling effects (*e.g.,* the submission of a proposal may signal that the targeted company is underperforming or that the initial negotiations between the proponent and company failed), market expectations regarding the voting outcome, and market expectations regarding the probability of implementation of a proposal. Nevertheless, academic literature has attempted to measure the value of shareholder proposals and how this value varies with proposal topic and proponent type by studying the stock price reaction around announcements associated with shareholder proposals.[125]

At the same time, companies may bear both direct costs and opportunity costs associated with the submission of a shareholder proposal, and these costs may be passed on to shareholders.[126]

[121] There is an extensive academic literature on the value of shareholder activism, including activism through shareholder proposals. *See, e.g.,* Matthew R. Denes et al., *Thirty Years of Shareholder Activism: A Survey of Empirical Research,* 44 J. Corp. Fin. 405 (2017); for a review. *See also* 2019 Proposing Release, *supra* note 3, and 2020 Adopting Release, *supra* note 11, for an extensive discussion of the general economic considerations related to shareholder proposals and a description of academic literature related to the value of shareholder proposals.

[122] *See, e.g.,* Vicente Cuñat et al., *The Vote Is Cast: The Effect of Corporate Governance on Shareholder Value,* 67 J. Fin. 1943 (2012); Caroline Flammer, *Does Corporate Social Responsibility Lead to Superior Financial Performance? A Regression Discontinuity Approach,* 61 Mgmt. Sci. 2549 (2015). Yet, we note that there might be cross-sectional variation in the valuation effects of shareholder proposals and several recent academic papers have identified settings in which shareholder proposals have the potential to reduce value. For example, one paper found that passing shareholder proposals submitted by the most active individual sponsors result in negative abnormal returns and trigger sales by mutual funds that voted against these proposals. *See* Nickolay Gantchev & Mariassunta Giannetti, *The costs and benefits of shareholder democracy: Gadflies and low-cost activism,* 34 Rev. Fin. Stud. 5629 (2021). Another paper found a negative market reaction to shareholder proposals submitted by labor unions in years that a new labor contract must be negotiated. *See* John G. Matsusaka et al., *Opportunistic Proposals by Union Shareholders,* 32 Rev. Fin. Stud. 3215 (2019).

[123] *See, e.g.,* Chen Lin et al., *Managerial entrenchment and information production,* 55 J. Fin. & Quantitative Analysis 2500 (2020); Laurent Bach & Daniel Metzger, *How Do Shareholder Proposals Create Value?* (Working Paper, Mar. 1, 2017), *available at https://ssrn.com/abstract=2247084.*

[124] *See, e.g.,* J. Robert Brown, Jr., *Corporate Governance, Shareholder Proposals, and Engagement Between Managers and Owners* (Univ. of Denv. Sturm Coll. of L., Working Paper No. 17–15, 2017), *available at https://ssrn.com/abstract=2957998.*

[125] In the 2019 Proposing Release, the Commission summarized the findings of empirical literature that examines whether proposals are economically beneficial by studying short-run abnormal stock returns around key events related to shareholder proposals. *See* 2019 Proposing Release, *supra* note 3, at 66495. The main events related to shareholder proposals studies in academic literature comprise the initial press announcement of submission of a shareholder proposal, the proxy mailing date, and the date of the shareholder meeting. *See* 2020 Adopting Release, *supra* note 11, at 70285, for a description of limitations associated with using short-term market reactions to measure the benefits of shareholder proposals.

[126] In particular, to the extent applicable, companies incur costs to: (i) review the proposal and address issues raised in the proposal; (ii) engage in discussions with the shareholder-proponent(s); (iii) print and distribute proxy materials, and tabulate votes on the proposal; (iv) communicate with proxy advisory firms and shareholders (*e.g.,* proxy solicitation costs); (v) if they intend to exclude the proposal, file a notice with the Commission; and (vi) prepare a rebuttal to the submission to the Commission. *See* 2020 Adopting Release, *supra* note 11, at 70272–70275, for a detailed discussion of the costs to companies. We recognize that there is variation in the costs associated with responding to shareholder proposals and that some costs that companies incur are mandatory, while others are discretionary. As a result, the 2020 Adopting Release used a range of estimates, $20,000–$150,000, as a measure of the direct costs to companies associated with addressing a singular shareholder proposal. *See* 2020 Adopting Release, *supra* note 11, at 70274. We also note that the cost of addressing a resubmission may be lower than the cost of addressing a first-time proposal. *See* 2019 Proposing Release, *supra* note 3, at 66496. Lastly, the costs associated with the

Continued

Several commenters to the 2020 amendments noted that no-action correspondence represents the most substantial cost companies incur related to shareholder proposals.[127] Shareholders other than the shareholder-proponent may also bear costs associated with their own consideration of a shareholder proposal.[128] Finally, shareholder-proponents bear costs associated with preparing a shareholder proposal, submitting a proposal to be included in a company's proxy statement and, as applicable, engaging with management following proposal submission.[129]

2. Rule 14a–8(i)(10)—Substantial Implementation

As discussed in Section II.A.2, we are proposing to amend Rule 14a–8(i)(10) to state that a proposal may be excluded as substantially implemented ''[i]f the company has already implemented the essential elements of the proposal.'' The proposed amendment's modification to the definition of ''substantial implementation'' to focus on the ''essential elements'' of a proposal would set forth a more objective and more specific standard for excluding proposals than the existing rule language. By providing the staff with a more objective and specific framework for analyzing the exclusion when reviewing and responding to no-action requests, we believe that the amended standard should result in no-action positions that are more predictable and consistent than under the current rule. Increased transparency and reduced uncertainty around the application of Rule 14a–8(i)(10) would benefit companies by facilitating more informed decision-making when considering whether to exclude a proposal.[130] In particular, companies may be better able to weigh the costs and benefits of seeking a no-action letter, especially in instances in which the staff is unlikely to agree with the application of the exclusion because a company has implemented some but not all of the essential elements of an earlier proposal. As we noted above, costs to companies associated with no-action requests can be significant.[131] In turn, to the extent that companies seek no-action letters less frequently as a result of the proposed amendment, because they conclude that seeking such letters would not be successful, they may incur lower costs related to shareholder proposal submissions. The proposed amendment could have a greater effect on larger companies because a larger company is more likely to receive a shareholder proposal and is also more likely on average to submit a no-action request than a smaller company. On the other hand, costs related to shareholder proposals may be a relatively smaller percentage of the total cost of operations for larger companies than for smaller companies.

The reduced uncertainty around proposal excludability could also benefit shareholder-proponents by facilitating more informed decision-making when considering whether to submit a proposal. In particular, the ability to better predict the staff's no-action positions may allow shareholder-proponents to avoid submitting proposals when the essential elements have already been implemented by a company and that would be unlikely to be permitted to go to a shareholder vote. In addition, the increased transparency and reduced uncertainty of the application of the proposed amendment coupled with companies potentially seeking no-action letters less frequently may lead shareholder-proponents to benefit from having to spend less time and fewer resources to reply to companies' no-action requests.

We expect that the proposed amendment will result in more consistent determinations under Rule 14a–8(i)(10) across proposals and over time. Current exclusion determinations can vary, which may contribute to the variability in the number of shareholder proposals included in companies' proxy statements.[132] Consequently, we expect the increased consistency of exclusion determinations resulting from the proposed amendment to reduce the variability in the number of shareholder proposals included in companies' proxy statements.

Whether the proposed amendment has an effect on the number of proposals submitted and included in companies' proxy statements in any given proxy season going forward depends on a number of factors, including whether and how companies and shareholder-proponents change their behavior as a result of the proposed amendment. While we do not have data that would allow us to assess the extent to which companies and shareholder-proponents may change their behavior in response to the proposed amendment to Rule 14a–8(i)(10), we qualitatively describe below how potential changes in behavior may impact the number of proposals submitted and included in companies' proxy statements. In particular, companies could modify their behavior around proposal implementation or shareholder-proponents could modify their behavior around proposal submission in response to this proposed amendment. For example, companies might take into account that implementing the essential elements of a prior proposal could preclude a subsequent proposal with the same essential elements from being considered in a future meeting, while implementation of some of the elements of a proposal but not all of the essential elements could result in recurring future votes on a proposal that contains essential elements that were not implemented. However, we recognize that companies (and shareholder-proponents) may continue to encounter some uncertainty when seeking to determine whether the essential

submission of a shareholder proposal may include opportunity costs and thus may be larger than the estimates used in the 2020 Adopting Release. *See* 2020 Adopting Release, *supra* note 11, at 70266 n.295.

[127] *See* 2020 Adopting Release, *supra* note 11, at 70272–70273 n. 332, 339.

[128] *See* 2020 Adopting Release, *supra* note 11, at 70276–70277, for a detailed discussion of the costs to non-proponent shareholders. Although these costs may be difficult to quantify, many institutional investors retain proxy advisory firms to perform a variety of services to reduce the burdens associated with proxy voting decisions, including voting decisions on shareholder proposals. We have limited data on fees charged by proxy voting advisory firms but note that one such proxy advisory firm, ISS, reports a fee ranging from $5,000 to above $1,000,000 per client on Form ADV. However, we note that this fee covers a broad range of services provided by ISS (*e.g.,* voting services, governance research, ratings provision, etc.) and includes proxy voting advice services related to board elections and management proposals. *See* 2020 Adopting Release, *supra* note 11, at 70277 n.369, for a detailed discussion of the costs to non-proponent shareholders. In addition to costs associated with obtaining proxy voting advice for institutional investors, retail shareholders may incur direct costs and both retail and institutional non-proponent shareholders may incur opportunity costs related to shareholder proposals. However, we do not have data that would allow us to reliably estimate these costs.

[129] Under Rule 14a–8(b)(iii), shareholder-proponents are required to submit a written statement stating their availability to discuss their proposal with the company. As a result, in addition to the costs associated with proposal preparation, shareholder-proponents may incur some costs associated with: (i) disclosing the times the proponents will be available to communicate with management as well as preparing to communicate and communicating with management and (ii) the opportunity costs associated with setting aside and spending time to communicate with management instead of engaging in other activities. We do not have data that would allow us to reliably estimate these costs.

[130] We recognize that some uncertainty regarding the application of the substantial implementation exclusion may remain because the determination of whether elements of a proposal are essential may vary across proposals.

[131] Table 2 above shows that during the five-year period, 2017–2021, companies in the S&P 500 index received 75 percent of submitted shareholder proposals. *See also* Soltes et al. (2017), *supra* note 110 (finding that companies that submit no-action requests proposals tend to be larger and receive more proposals on average).

[132] *See supra* Section III.B.2.

elements of a prior proposal have been implemented. To the extent that companies become more likely to implement all of the essential elements of a proposal, the number of proposals included in companies' proxy materials could decrease.

Conversely, knowing that a proposal containing essential elements that the company had not already implemented is unlikely to be excludable under the amended standard, shareholder-proponents could draft a proposal to focus on these essential elements and in turn, increase the likelihood of this proposal appearing in a company's proxy statement. Such changes in shareholder-proponent behavior could result in an increase shareholder proposals submitted and included in companies' proxy statements.

Because we cannot reliably predict whether and the extent to which companies and shareholder-proponents may change their behavior in response to the proposed amendment to Rule 14a–8(i)(10), the effect of the proposed amendment on the number of shareholder proposals and the distribution of shareholder proposal types is unclear. Lastly, for reasons explained above in Section III.C.1, we cannot reliably predict whether any potential change in the number of shareholder proposals submitted or included in companies proxy statements will result in net benefits or costs to companies and shareholders.

3. Rule 14a–8(i)(11)—Duplication

As discussed in Section II.B.2, we are proposing to amend Rule 14a–8(i)(11) to indicate that a proposal ''substantially duplicates'' another proposal that will be included in the company's proxy materials for the same meeting if it ''addresses the same subject matter and seeks the same objective by the same means.'' We expect that the proposed amendment would provide the staff a more objective and specific framework for applying the duplication exclusion when reviewing and responding to no-action requests than the existing rule language, thereby reducing uncertainties with respect to the application of the exclusion and promoting more predictable and consistent determinations.[133]

We expect the benefits to companies and their non-proponent shareholders would be qualitatively similar to those described in Section III.C.2 above with respect to Rule 14a–8(i)(10) because greater predictability and certainty about the application of Rule 14a–8(i)(11) could facilitate more informed decision-making around the submission of a no-action request. For example, companies may be better able to weigh the costs and benefits of seeking a no-action letter, especially in instances where the staff is unlikely to agree with the application of the exclusion because a proposal that the company is seeking to exclude has a different subject matter or different objectives or means as those in another proposal that is to be included in the proxy statement, and is thus, not ''substantially duplicative.'' We note, however, that quantitatively these benefits could be less pronounced than those described in Section III.B.2 with respect to Rule 14a–8(i)(10) since companies have been less likely to assert Rule 14a–8(i)(11) as the basis for exclusion than Rule 14a–8(i)(10).[134] Also, for the same reasons as those described in Section III.B.2, this proposed amendment may have a differential effect on larger and smaller companies. The extent to which greater predictability and certainty around determinations under the proposed amendment to Rule 14a–8(i)(11) could benefit shareholder-proponents in drafting proposals would be limited because proponents are unlikely to observe the content of other proposals that are concurrently submitted for inclusion in the same proxy statement during their own proposal preparation.[135]

Similarly to the discussion of the proposed Rule 14a–8(i)(10) amendments above, we expect the proposed amendment to Rule 14a–8(i)(11) to reduce the variability in the number of shareholder proposals included in companies' proxy statements from one proxy season to the next, but we cannot reliably predict how the number of shareholder proposals submitted or included in companies' proxy statements might change. In particular the number of shareholder proposals could change to the extent that shareholder-proponents could modify their behavior in response to this proposed amendment. For example, a shareholder-proponent potentially could draft a proposal to be more particular regarding its objectives or means so as to minimize the likelihood of those objectives or means being deemed the same objectives or means as those in another proposal that potentially could be submitted on the same subject matter for the same shareholder meeting. However, the possibility of such changes in proponent behavior likely would be mitigated by proponents' consideration of the micromanagement exclusion under Rule 14a–8(i)(7), among other considerations.[136] While this potential change in proponent behavior could result in more shareholder proposals included in companies' proxy statements, we do not have data that would allow us to assess the likelihood of proponent behavior changes or quantify the potential increase in the number of proposals.

If the number of shareholder proposals included in companies' proxy statements increases, the likelihood of multiple shareholder proposals dealing with the same or similar subject matter but having different objectives and/or means appearing in the same proxy statement could increase. This change could lead to shareholder confusion or the need for shareholders to spend additional time and resources to review and compare the similar, but not duplicative, proposals.[137] In addition, companies may face implementation challenges and costs if shareholders approve multiple similar, but not duplicative, proposals. However, if shareholder consideration of similar, but not duplicative, proposals leads to greater support for and improved likelihood of implementation of a proposal that aligns more closely with the objectives of shareholders, then shareholders could benefit.

4. Rule 14a–8(i)(12)—Resubmissions

As discussed in Section II.C.2, we are proposing to amend Rule 14a–8(i)(12) to revise the standard for what constitutes a resubmission from a proposal that ''addresses substantially the same subject matter'' as a prior proposal to a proposal that ''substantially duplicates'' a prior proposal, defined the same way that phrase is defined in the proposed

[133] We recognize that some uncertainty regarding the application of the duplication exclusion may remain because the determination of whether the objectives or means of two or more proposals are the same may vary across proposal characteristics.

[134] During the 2021, 2020, and 2019 proxy seasons, the staff received 12, 9, and 16 no-action requests, respectively, asserting the duplication exclusion. Companies asserted the duplication exclusion in approximately five percent of no-action requests submitted over these three proxy seasons. As of May 10, 2022, the staff has received 22 no-action requests asserting the duplication exclusion, accounting for approximately nine percent of no-action requests submitted up until that point during the 2022 proxy season.

[135] We expect that the likelihood that proponents observe concurrently submitted proposals has been further reduced with the 2020 amendments to Rule 14a–8(c), which limited the ability of a single representative to submit multiple shareholder proposals on behalf of multiple shareholders to the same meeting. *See* 2020 Adopting Release, *supra* note 11.

[136] *See supra* note 14.

[137] Institutional investors may choose to rely on proxy advisory firms to analyze similar, but not duplicative, proposals and determine whether they should vote on these proposals in a similar way. *See supra* note 128.

amendment to Rule 14a–8(i)(11).[138] As with the proposed amendments to Rule 14a–8(i)(10) and Rule 14a–8(i)(11) described above, we expect that the proposed amendment would provide the staff with a more objective and specific framework for applying the resubmission exclusion when reviewing and responding to no-action requests than the existing rule language, thereby reducing uncertainties with respect to the application of the exclusion and promoting more predictable and consistent determinations.

We expect the benefits to companies and their non-proponent shareholders to be qualitatively similar to those described in Section III.C.2 and Section III.C.3 above because greater predictability and certainty about the application of Rule 14a–8(i)(12) could facilitate more informed decision-making around the submission of a no-action request. The proposed amendments could also benefit shareholder-proponents by facilitating more informed decision-making when preparing a shareholder proposal for submission. In particular, the ability to better predict the staff's no-action positions may allow shareholder-proponents to avoid spending time and resources on submitting a proposal that substantially duplicates a prior proposal that has failed to meet the rule's specified vote thresholds and that likely would be excluded from a company's proxy statement. However, we do not expect these benefits to companies and their shareholder-proponents to be large because very few proposals are currently excluded from companies' proxy statements on the basis of Rule 14a–8(i)(12).[139]

Similarly to the discussion above of the proposed amendments to Rule 14a–8(i)(10) and Rule 14a–8(i)(11), we cannot reliably predict the extent to which shareholder-proponents might modify their behavior in response to this proposed amendment, and we cannot quantify how the number of proposals submitted and included in companies' proxy statements could change as a result. However, we note that potential changes in shareholder-proponents' behavior could increase the number of proposals submitted and included in companies' proxy statements. Currently, shareholder-proponents may refrain from submitting a shareholder proposal dealing with substantially the same subject matter as an earlier proposal if the earlier proposal failed to garner sufficient levels of support to satisfy the resubmission thresholds because they may recognize that such a proposal is likely to be excluded from the company's proxy statement under Rule 14a–8(i)(12).[140] This appears to have led to a relatively low number of no-action requests seeking to rely on the resubmission exclusion.[141] Under the proposed amendment, a proponent could change the objective or the means of a previously submitted proposal about the same subject matter so as to allow for it to be considered an initial submission instead of a resubmission. Shareholder-proponents might be more likely to do this in instances where circumstances at the company have changed from one year to the next and, due to those circumstances, where a similar but not duplicative proposal may garner significantly more votes than a prior proposal. At the same time, by reducing the potential for the ''umbrella'' effect of the resubmission exclusion, the proposed amendment could result in the inclusion of multiple proposals submitted by differing proponents offering different objectives or means to address the same issue.[142]

The proposed amendment to the resubmission exclusion could result in benefits to shareholder-proponents to the extent that that there is an increase in the number of proposals included in companies' proxy statements and shareholder-proponents submit only those proposals that are net beneficial to them. The increase in the number of submitted proposals could also result in benefits to companies and their non-proponent shareholders if these additional proposals lead to value-enhancing changes. To the extent that the proposed amendment would facilitate proponents experimenting and making adjustments to previously submitted proposals to build broader support, the amendment could also lead to proposals that align more closely with the objectives of shareholders to be put to a shareholder vote. Voting outcome data for these additional proposals could further inform management about shareholder views, allowing it to consider actions that are of greater importance across larger swaths of the shareholder base and potentially leading to improved efficiency in the management-shareholder engagement process. On the other hand, the potential increase in the number of submitted shareholder proposals could translate to increased costs to companies associated with the consideration of proposals, engagement with shareholder-proponents, or proposal inclusion in the proxy statement and increased costs to non-proponent shareholders associated with their own consideration of shareholder proposals.[143] Further, the potential increase in the number of submitted proposals could result in additional costs to companies and their non-proponent shareholders if these additional proposals lead to changes that reduce companies' future performance.

Lastly, because voting outcomes and shareholder-proponents' propensity to resubmit previously voted-on proposals varies across proposal topics and proponent types, this amendment may impact certain proposal categories and certain proponent types more than others. In particular, subject to specific facts and circumstances, the proposed amendment may have a greater effect on environmental proposals and proposals submitted by institutional proponents because these types of proposals are less likely to be eligible for resubmission following the 2020 amendments to the voting thresholds in Rule 14a–8(i)(12) than governance and social proposals and proposals submitted by individual proponents, respectively.[144]

D. Anticipated Effects on Efficiency, Competition, and Capital Formation

By making exclusion determinations more certain and predictable and enabling companies and shareholder-proponents to make more informed decisions around the submission of a no-action request and submission of a proposal, respectively, we expect the proposed amendments to improve efficiency. Specifically, the proposed amendments could allow companies to avoid inefficiently using time and resources to attempt to exclude a shareholder proposal from proxy statements in instances in which the proposed amendments would not permit exclusion. Similarly, the proposed amendments could allow shareholder-proponents to avoid inefficiently using time and resources to prepare a proposal submission that

[138] *See supra* Section III.C.3.

[139] During the 2021, 2020, and 2019 proxy seasons, the staff received 2, 3, and 1 no-action requests, respectively, asserting the resubmission exclusion. Companies asserted the resubmission exclusion in less than one percent of no-action requests submitted over these three proxy seasons. As of May 10, 2022, the staff has received 11 no-action requests asserting the resubmission exclusion, accounting for approximately five percent of no-action requests submitted up until that point during the 2022 proxy season.

[140] *See supra* note 120.

[141] *See supra* note 139.

[142] *See supra* note 54 and the accompanying text.

[143] *See supra* note 126.

[144] *See supra* notes 100 and 101 for a description of how we grouped proposals into governance, social, and environmental categories, and proponent types.

likely will be excluded from a company's proxy statement.

The proposed amendments could lead to additional effects on efficiency and capital formation as a result of the potential changes in companies' and shareholder-proponents' behavior leading to a change in the number and characteristics of proposals included in companies' proxy statements. For example, the proposed amendments could further improve efficiency and increase capital formation if additional included shareholder proposals result in value-enhancing policy changes or provide additional information to management about shareholder views.[145] On the other hand, companies may bear costs associated with considering and addressing additional proposals, leading to a potential reduction in efficiency and capital formation.[146]

Because the potential costs and benefits of the proposed amendments may be greater for certain companies, the proposed amendments could result in competitive effects. For example, the proposed amendment could have a greater effect on U.S. public companies relative to those that are not subject to the federal proxy rules, namely foreign companies and U.S. private companies. Further, the proposed amendments could have a greater effect on larger public companies relative to smaller public companies because larger public companies are more likely to receive shareholder proposals. These competition effects could, for instance, arise through the capital formation channel described above. However, because the proposed amendments could result in greater benefits but also greater costs to certain companies, we cannot reliably predict whether and how the competitive position of these companies may change as a result of the proposed amendments.

E. Reasonable Alternatives

1. Rule 14a–8(i)(10)—Substantial Implementation

We considered a number of alternative approaches to amending Rule 14a–8(i)(10). First, we considered proposing a change to the rule that would require a proposal to be fully implemented in exactly the way a proponent describes it in the proposal for it to be excludable from a company's proxy statement. The benefit of this approach is that it would be a standard that is more predictable in application because it would not require a determination of which elements of the proposal are essential. We expect that this alternative could lead to greater consistency and predictability of determinations under Rule 14a–8(i)(10). Further, because a full implementation standard would be more straightforward for companies and proponents to understand and apply, it may be more likely to result in a lower number of no-action requests than under the proposed amendments. However, this alternative could result in more shareholder proposals appearing in a company's proxy statement relative to the proposed amendment even if the differences between a shareholder-proponent's preferred policies and the policies that the company has already implemented are only minimal. The full implementation alternative would be likely to result in relatively greater costs associated with companies' addressing and non-proponent shareholders' consideration of these additional proposals.

We also considered various other formulations of what would be considered ''substantially implemented,'' such as if the company has already:

(1) Effected substantially all of what the proposal requests;

(2) Addressed substantially all of the underlying concerns of the proposal; or

(3) Implemented the essential objectives of the proposal.

All three of these alternatives may require a more fact-intensive analysis (*e.g.,* delineating ''what the proposal requests'' or its ''underlying concerns'' or ''essential objectives'' and determining whether the company has ''substantially'' addressed them) compared to the proposed amendment. Further, in the second and third alternatives, the analysis may not be sufficiently focused on the specific elements of the proposal, which may not serve the purpose of the exclusion to avoid the consideration of proposals on which a company has already ''favorably acted.'' We expect that all three alternative standards would be difficult to apply in a consistent and predictable manner. As a result, companies and shareholders would potentially experience greater uncertainty with respect to the application of the substantial implementation exclusion under such alternatives relative to the proposed amendment.

2. Rule 14a–8(i)(11)—Duplication

As an additional change to the proposed amendment to Rule 14a–8(i)(11), we considered changing the existing first-in-time standard to instead provide for the exclusion of the duplicative proposal that has fewer co-proponents. As with the first-in-time standard, this alternative would provide an objective criterion for exclusion of a proposal. By focusing on the number of co-proponents, this alternative would place an emphasis on the potential breadth of shareholder support a proposal might receive. However, we find little evidence in the data that the number of co-proponents is positively associated with the level of support for a proposal.[147] Further, this alternative approach would not provide a methodology for determining which proposal should be excluded in cases in which duplicative proposals have the same number of co-filers. We also considered changing the existing first-in-time standard to instead provide for the exclusion of the duplicative proposal that has fewer number of shares held by a proponent or co-proponents. However, a proponent's ownership or the aggregate ownership of co-proponents may not be correlated with the eventual level of shareholder support a proposal may receive.[148] Lastly, we expect that the potential benefits associated with changing the first-in-time standard to one of the alternatives described above, beyond those of the proposed amendment, would be minimal because the proposed amendment alone may reduce the incentives for proponents to submit a proposal quickly or reduce the incentives for proponents to attempt to preempt other proposals those proponents do not agree with and in turn, address the concerns associated with the first-in-time standard of the duplication exclusion.

3. Rule 14a–8(i)(12)—Resubmissions

As an alternative to the proposed amendment to Rule 14a–8(i)(12), we considered returning to the pre-1983 standard defining a resubmission as ''substantially the same proposal'' and interpreting that to mean a proposal that is virtually identical (in form as well as substance) to a proposal previously included in the company's proxy materials. This alternative may be easier to apply relative to the proposed amendments because it would not involve a determination about the objectives and means of a proposal. We would expect that such an alternative

[145] *See supra* notes 122–124 and the accompanying text.

[146] *See supra* note 126.

[147] Using shareholder proposals that were voted on in meetings held in 2017–2021 and controlling for proposal topic, we find a positive but not statistically significant correlation between the numbers of co-proponents and the voting support a proposal received.

[148] *See* 2019 Proposing Release, *supra* note 3, at 66488 n. 188.

could to lead to a greater consistency and predictability of determinations under Rule 14a–8(i)(12) and potentially result in fewer no-action requests. However, as discussed in Section II.C, reverting to the pre-1983 standard would re-introduce the concern previously acknowledged by the Commission that a shareholder-proponent could make some minor changes to a previously submitted proposal so as to not have the proposal excluded. In turn, this alternative could result in the inclusion of proposals in companies' proxy statements that have little potential for obtaining broader or majority support in the near term, which could result in greater costs for companies and their shareholders.

F. Request for Comment

We request comment on all aspects of our economic analysis, including the potential costs and benefits of the proposed amendments and alternatives thereto, and whether the amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views, in particular, on costs and benefits estimates. In addition, we request comments on our selection of data sources, empirical methodology, and the assumptions we have made throughout the analysis. In addition, we request comment on the following:

1. Are there any entities that would be affected by the proposed amendments that are not discussed in the economic analysis? In which ways are those entities affected by the proposed amendments? Please provide an estimate of the number of any additional affected entities.

2. Are there any costs or benefits of the proposed amendments that are not discussed in the economic analysis? If so, please describe the types of costs and benefits and provide a dollar estimate of these costs and benefits.

3. We have provided a qualitative analysis of the costs and benefits of the proposed amendments. What would be the quantitative impact of the proposed amendments? Please provide data about or dollar estimates of the costs and benefits as they relate to proponents, companies, and non-proponent shareholders.

4. What would be the effects of the proposed amendments, including any effects on efficiency, competition, and capital formation? Would the proposed amendments be beneficial or detrimental to proponents, companies, and the companies' non-proponent shareholders, and why in each case?

5. Could the proposed amendments to Rule 14a–8(i)(10), Rule 14a–8(i)(11), or Rule 14a–8(i)(12) allow companies to make more informed decisions around inclusion or exclusion of proposals and the submission of no-action requests? Would companies submit fewer no-action requests to the Commission's staff as a result of the proposed amendments? Could there be a cost savings to companies associated with companies no longer attempting to exclude proposals that are unlikely to be excludable under Rule 14a–8(i)(10), Rule 14a–8(i)(11), or Rule 14a–8(i)(12)?

6. Could the proposed amendments to Rule 14a–8(i)(10), Rule 14a–8(i)(11), or Rule 14a–8(i)(12) allow shareholder-proponents to make more informed decisions around submitting proposals? Would shareholder-proponents submit different proposals in terms of subject matter and/or quantity as a result? Could the proposed amendments benefit shareholder-proponents by allowing them to avoid submitting proposals that are likely to be excludable under Rule 14a–8(i)(10), Rule 14a–8(i)(11), or Rule 14a–8(i)(12)?

7. How might companies and shareholder-proponents change their behavior in response to the proposed amendments to Rule 14a–8(i)(10), Rule 14a–8(i)(11), or Rule 14a–8(i)(12)? How might these changes in behavior affect the number and characteristics of proposals submitted and included in companies' proxy statements? How might these changes in behavior impact the distribution of proposal topics submitted and included in companies' proxy statements? Would these changes result in benefits or costs to companies, proponents, and non-proponent shareholders?

8. We described in Section III.E above a number of alternative approaches or additional changes to the proposed amendments that we considered. Are there any costs or benefits to these alternatives that are not discussed in the economic analysis? If so, please describe the types of costs and benefits and provide a dollar estimate of these costs and benefits.

9. Are there additional alternatives to the proposed amendments that we should consider? If so, please describe the types of costs and benefits of these additional alternatives and provide a dollar estimate of these costs and benefits.

IV. Paperwork Reduction Act

A. Summary of the Collection of Information

Certain provisions of our rules and schedules that would be affected by the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[149] We are submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[150] The hours and costs associated with preparing, filing, and sending the schedules, including preparing documentation required by the shareholder-proposal process, constitute paperwork burdens imposed by the collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information requirement unless it displays a currently valid OMB control number. Compliance with the information collection is mandatory. Responses to the information collection are not kept confidential, and there is no mandatory retention period for the information disclosed. The title for the affected collection of information is:

''Regulation 14A (Commission Rules 14a–1 through 14a–21 and Schedule 14A)'' (OMB Control No. 3235–0059).

We adopted the existing regulations and schedule pursuant to the Exchange Act. The regulations and schedule set forth the disclosure and other requirements for proxy statements filed by issuers and other soliciting parties. A detailed description of the proposed amendments, including the need for the information and its proposed use, as well as a description of the likely respondents, can be found in Section II above, and a discussion of the expected economic effects of the proposed amendments can be found in Section III above.

B. Summary of the Proposed Amendments' Effects on the Collection of Information

As discussed in Section II above, the proposed amendments are intended to provide a clearer framework for the application of three of the substantive bases for the exclusion of shareholder proposals under Rule 14a–8. The proposed amendments to Rule 14a–8(i)(10), 14a–8(i)(11), and 14a–8(i)(12) would provide greater certainty and transparency to shareholders and companies as they evaluate whether these bases would apply to particular proposals.

[149] 44 U.S.C. 3501 *et seq.*

[150] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

C. Incremental and Aggregate Burden and Cost Estimates for the Proposed Amendments

The paperwork burden estimate for Regulation 14A includes the burdens imposed by our rules that may be incurred by all parties involved in the proxy process leading up to and associated with the filing of a Schedule 14A. The current number of estimated responses for the collection of information for Regulation 14A is 6,369 annual responses, reflecting 777,590 internal burden hours and a professional cost burden of $103,678,712.[151] The total burden estimate for Regulation 14A reflects, among other things, the collection-of-information burden associated with Rule 14a–8, which includes both the time that a shareholder-proponent spends to prepare its proposals for inclusion in a company's proxy statement, as well as the time that the company spends to prepare its proxy statement to include and respond to such proposals. We recognize that the burdens on a particular proponent or company would likely vary based on a number of factors, including the propensity of a particular shareholder-proponent to submit proposals, or the number of shareholder proposals received by a particular company, which may be related to its line of business or industry or other factors.

The proposed amendments to Rule 14a–8 would revise the text of Rule 14a–8 to provide clearer standards for exclusion, and promote more consistent and predictable determinations regarding the exclusion of proposals under the rule. The proposed amendments are not expected to affect the number of annual responses under the Regulation 14A information collection, as the obligation to prepare and file proxy statements would remain irrespective of the proposed amendments. The proposed amendments could either increase the burden associated with particular filings (for example, by leading to the inclusion of more shareholder proposals in companies' proxy statements) or reduce the burden (for example, by providing a clearer basis for exclusion of a shareholder proposal). While the effects of the proposed amendments on the burden hours and professional costs are difficult to predict, as they would depend on a number of interrelated and potentially offsetting factors, we expect that the overall burdens associated with Regulation 14A would not change significantly. Thus we are estimating no change in paperwork burden in connection with the proposed amendments, although we solicit comment on this and other aspects of our PRA analysis below.

Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility;
- Evaluate the accuracy and assumptions and estimates of the burden of the proposed collection of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- Evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the U.S. Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to, Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–20–22. Requests for materials submitted to OMB by the Commission with regard to the collection of information should be in writing, refer to File No. S7–20–22 and be submitted to the U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this proposed rule. Consequently, a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

V. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[152] the Commission must advise OMB as to whether the proposed amendments constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the U.S. economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether the proposed amendments would be a ''major rule'' for purposes of SBREFA. In particular, we request comment on the potential effect of the proposed amendments on the U.S. economy on an annual basis; any potential increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (''RFA'') [153] requires an agency, when issuing a rulemaking proposal, to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (''IRFA'') that describes the impact of the proposed rule on small entities.[154] This IRFA has been prepared in accordance with the RFA and relates to the proposed amendments to Rule 14a–8(i)(10), Rule 14a–8(i)(11), and Rule 14a–8(i)(12) under the Exchange Act described in Section II above.

A. Reasons for, and Objectives of, the Proposed Action

Rule 14a–8 provides an important mechanism for shareholders to express their views, provide feedback to companies, and raise important issues for the consideration of their fellow shareholders by the inclusion of shareholder proposals in the company's proxy statement. The proposed amendments are intended to facilitate shareholder suffrage and communication between shareholders and the companies in which they invest, as well as among a company's

[151] These numbers reflect the Commission's current OMB PRA filing inventory. The OMB PRA filing inventory represents a three-year average. Averages may not align with the actual number of filings in any given year.

[152] 5 U.S.C. 801 *et seq.*

[153] 5 U.S.C. 601 *et seq.*

[154] 5 U.S.C. 603(a).

shareholders, through the shareholder proposal process. In particular, they are intended to enhance the ability of shareholders to express diverse objectives, consider various ways to address issues, and provide greater certainty and transparency to shareholders and companies as to the application of certain of the substantive standards for the exclusion of proposals under Rule 14a–8. The reasons for, and objectives of, the proposed amendments are discussed in more detail in Section II above. We discuss the economic impact and potential alternatives to the proposed amendments in Section III, and the estimated compliance costs and burdens of the amendments under the PRA in Section IV above.

B. Legal Basis

We are proposing amendments to the rules under the authority set forth in Sections 3(b), 14, and 23(a) of the Exchange Act, as amended, and Sections 20(a), 30, and 38 of the Investment Company Act, as amended.

C. Small Entities Subject to the Proposed Rules

The proposed amendments would affect some small entities that are either: (i) shareholder-proponents that submit Rule 14a–8 proposals, or (ii) issuers subject to the federal proxy rules that receive Rule 14a–8 proposals. The RFA defines ''small entity'' to mean ''small business,'' ''small organization'' or ''small governmental jurisdiction.'' [155] The definition of ''small entity'' does not include individuals. For purposes of the RFA, under our rules, an issuer of securities or a person, other than an investment company, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year.[156] We estimate that there are approximately 772 issuers that are subject to the federal proxy rules, other than investment companies, that may be considered small entities.[157] An investment company, including a business development company, is considered to be a ''small business'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[158] We estimate that, as of December 2021, there were approximately 80 investment companies that are subject to the federal proxy rules that may be considered small entities.[159] We are unable to estimate the number of potential shareholder-proponents that may be considered small entities; [160] therefore, we request comment on the number of these small entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

If adopted, the proposed amendments would apply to small entities to the same extent as other entities, irrespective of size. Therefore, we generally expect the nature of any benefits and costs associated with the proposed amendments to be similar for large and small entities. However, as noted in Section III.C above, the proposed amendments could have a greater effect on larger entities because larger entities are more likely to receive shareholder proposals and submit no-action requests than smaller entities. Accordingly, we refer to the discussion of the proposed amendments' economic impact, including the estimated costs and benefits, on all affected parties, including small entities, in Section III.C above. Consistent with that discussion, we anticipate that the economic benefits and costs likely could vary among small entities based on a number of factors, such as the propensity of a particular shareholder-proponent to submit proposals, or the number of shareholder proposals received by a particular issuer, which may be related to its line of business or industry or other factors, which makes it difficult to project the economic impact on small entities with precision. While the proposals themselves do not impose any new reporting, recordkeeping or compliance requirements, they could affect the costs associated with preparing a proxy statement or a shareholder proposal depending on the particular facts and circumstances. As explained in Section III, in many cases we are unable to quantify these costs because we lack information necessary to make reasonable estimates. As a general matter, however, we recognize that the costs of the proposed amendments borne by the affected entities could have a proportionally greater effect on small entities, as these costs may be a relatively greater percentage of the total cost of operations for smaller entities than larger entities, and thus small entities may be less able to bear such costs relative to larger entities. The proposed amendments could create varying competitive effects for companies based on company size. As noted in Section III.D above, the proposed amendments could have a greater competitive effect on larger public companies relative to smaller public companies because larger public companies are more likely to receive shareholder proposals. However, because the proposed amendments could result in both greater benefits and greater costs to certain companies, we cannot reliably predict whether and how the competitive position of smaller public companies may change as a result of the proposed amendments.

Compliance with the proposed amendments may require the use of professional skills, including legal skills. We request comment on how the proposed disclosure amendments would affect small entities, including the type of professional skills necessary for compliance with the proposed amendments.

E. Duplicative, Overlapping, or Conflicting Federal Rules

We believe that the proposed amendments would not duplicate, overlap, or conflict with other federal rules.

F. Significant Alternatives

The RFA directs us to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements that take into account the resources available to small entities;
- Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and

[155] 5 U.S.C. 601(6).

[156] 17 CFR 240.0–10(a).

[157] This estimate is based on staff analysis of issuers potentially subject to the final amendments, excluding co-registrants, BDCs, and issuers of asset-backed securities, with EDGAR filings on Form 10–K, or amendments thereto, or any proxy filing as described in note 73, *supra,* filed during the calendar year of Jan. 1, 2021 to Dec. 31, 2021. This analysis is based on data from XBRL filings, S&P Compustat, Ives Group Audit Analytics, and manual review of filings submitted to the Commission.

[158] 17 CFR 270.0–10.

[159] This estimate is derived from an analysis of data obtained from Morningstar Direct as well as data filed with the Commission (Forms N–Q and N–CSR) for or during the last quarter of 2021.

[160] For the purposes of our Economic Analysis, we have estimated that there were approximately 176 proponents that submitted a proposal to be included in a company's proxy statement as a lead proponent during calendar year 2021. *See supra* Section III.A. Out of these 176 proponents, 66 were individuals, and 110 were non-individuals. Thus, no more than 110 of these unique proponents would be considered small entities. However, this data allows for the identification of a sole lead proponent of each proposal, but not all of a proposal's proponents, and, as a result, it should be interpreted as a lower bound on the total number of unique proponents.

• Exempting small entities from all or part of the requirements.

The Rule 14a–8 shareholder proposal process is used regularly by issuers and shareholder-proponents of all sizes, and the rule generally does not impose different standards or requirements based on the size of the issuer or shareholder-proponent. We do not believe that establishing different compliance or reporting obligations in conjunction with the proposed amendments or exempting small entities from all or part of the requirements is necessary. We believe the proposed amendments are equally appropriate for issuers and shareholder-proponents of all sizes seeking to engage with one another through the Rule 14a–8 process, and we see no reason why a shareholder-proponent of a company that is a small entity should be required to comply with differing standards regarding submission of a shareholder proposal to the company than a shareholder-proponent of a company that is a larger entity. In this regard, we anticipate that the proposed amendments would result in more predictable and consistent determinations regarding the application of Rule 14a–8(i)(10), Rule 14a–8(i)(11), and Rule 14a–8(i)(12) across proposals and over time, which would benefit both issuers and shareholder-proponents of all sizes. We do not believe that imposing different standards or requirements based on the size of the issuer or shareholder-proponent is necessary, and may result in additional costs associated with ascertaining whether a particular issuer or shareholder-proponent may avail itself of such different standards. For these reasons, we are not proposing differing compliance or reporting requirements or timetables, or an exception, for small entities. However, we seek comment on whether and how the proposed amendments could be modified to provide differing compliance or reporting requirements or timetables for small entities and whether such separate requirements would be appropriate.

The proposed amendments are intended to provide a clearer framework for the application of certain of the rule's substantive bases for the exclusion of proposals that is applicable to, and equally appropriate for, issuers and shareholder-proponents of all sizes. We believe that the proposed amendments are clear and that further clarification, consolidation, or simplification of the compliance requirements for small entities is not necessary, although we solicit comment on how the proposed amendments could be revised to reduce the burden on small entities.

Rule 14a–8 historically, and the proposed amendments generally, use design standards rather than performance standards in order to promote uniform requirements for all issuers and shareholder-proponents in connection with the submission of shareholder proposals. We solicit comment as to whether there are aspects of the proposed amendments for which performance standards would be appropriate.

G. Request for Comment

We encourage the submission of comments with respect to any aspect of this IRFA. In particular, we request comments regarding:

• How the proposed amendments can achieve their objective while lowering the burden on small entities;

• The number of small entities, including shareholder-proponents, that may be affected by the proposed amendments;

• The existence or nature of the potential impact of the proposed amendments on small entities and whether the proposed amendments would have any effects that have not been discussed in the analysis;

• How to quantify the impact of the proposed amendments; and

• Whether there are any federal rules that duplicate, overlap, or conflict with the proposed amendments.

Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

Statutory Authority and Text of Proposed Rule Amendments

We are proposing the rule amendments contained in this document under the authority set forth in Sections 3(b), 14, and 23(a) of the Exchange Act, as amended, and Sections 20(a), 30, and 38 of the Investment Company Act, as amended.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements; Securities.

In accordance with the foregoing, we are proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 2. Amend § 240.14a–8 by revising the text of paragraphs (i)(10) through (12) to read as follows:

§ 240.14a–8 Shareholder proposals.

* * * * *

(i) * * *

(10) *Substantially implemented:* If the company has already implemented the essential elements of the proposal;

* * * * *

(11) *Duplication:* If the proposal substantially duplicates (*i.e.,* addresses the same subject matter and seeks the same objective by the same means as) another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions:* If the proposal substantially duplicates (*i.e.,* addresses the same subject matter and seeks the same objective by the same means as) a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

(i) Less than 5 percent of the votes cast if previously voted on once;

(ii) Less than 15 percent of the votes cast if previously voted on twice; or

(iii) Less than 25 percent of the votes cast if previously voted on three or more times.

* * * * *

By the Commission.

Dated: July 13, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–15348 Filed 7–26–22; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–623]

Schedules of Controlled Substances: Placement of 4-hydroxy-N,N-diisopropyltryptamine (4–OH–DiPT), 5-methoxy-alpha-methyltryptamine (5–MeO–AMT), 5-methoxy-N-methyl-N-isopropyltryptamine (5–MeO–MiPT), 5-methoxy-N,N-diethyltryptamine (5–MeO–DET), and N,N-diisopropyltryptamine (DiPT) in Schedule I; Withdrawal of Proposed Rule and Notice of Hearing

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Withdrawal of proposed rule and withdrawal of notice of hearing.

SUMMARY: The Drug Enforcement Administration (DEA) is withdrawing a proposed rule that was published in the **Federal Register** on January 14, 2022, which proposed to place five tryptamine hallucinogens in schedule I of the Controlled Substances Act. Upon further consideration, DEA has determined that it is appropriate to submit a new request to the Department of Health and Human Services (HHS) for an updated scientific and medical evaluation and scheduling recommendation for these substances. Accordingly, DEA is withdrawing the proposed rule and notice of hearing that was published in the **Federal Register** on July 6, 2022, and is canceling the public hearing and terminating the pending hearing proceedings. DEA may issue a new proposed rule in the future regarding these substances if warranted.

DATES: The proposed rule that was published in the **Federal Register** on January 14, 2022 (87 FR 2376) is withdrawn as of July 27, 2022. The notice of hearing on the proposed rule that was published in the **Federal Register** on July 6, 2022 (87 FR 40167) is withdrawn as of July 27, 2022. The public hearing, originally scheduled to commence on August 22, 2022, is cancelled, and all proceedings related thereto are terminated.

FOR FURTHER INFORMATION CONTACT: Terrence L. Boos, Ph.D., Chief, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION: On January 14, 2022, DEA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (87 FR 2376) to place five tryptamine hallucinogens—specifically, 4-hydroxy-*N,N*-diisopropyltryptamine (4–OH–DiPT), 5-methoxy-*alpha*-methyltryptamine (5–MeO–AMT), 5-methoxy-*N*-methyl-*N*-isopropyltryptamine (5–MeO–MiPT), 5-methoxy-*N,N*-diethyltryptamine (5–MeO–DET), and *N,N*-diisopropyltryptamine (DiPT)—in schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801, *et seq.*). The proposed placement of these substances in schedule I was based on the scientific and medical evaluations and recommendations that the HHS provided to DEA.

In response to the NPRM, DEA received numerous comments and four requests for a hearing on the proposed rule, as provided in 21 U.S.C. 811(a). DEA scheduled a hearing on the proposed rule and published a notice to that effect in the **Federal Register** on July 6, 2022 (87 FR 40167). The public hearing was scheduled to commence on August 22, 2022.

Upon further consideration, DEA has determined that it is appropriate to submit a new request to HHS for an updated scientific and medical evaluation and scheduling recommendation for these substances in accordance with 21 U.S.C. 811(b) and 21 CFR 1308.43(d).

Accordingly, DEA's proposed rule published in the **Federal Register** on January 14, 2022 (87 FR 2376), and the notice of hearing on the proposed rule published in the **Federal Register** on July 6, 2022 (87 FR 40167), are withdrawn. The public hearing scheduled to commence on August 22, 2022 is canceled, and all proceedings related thereto are hereby terminated. DEA may issue a new proposed rule in the future regarding the five tryptamine hallucinogens if warranted.

Signing Authority

This document of the Drug Enforcement Administration was signed on July 22, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2022–16102 Filed 7–26–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 13

[Docket No. FWS–HQ–ES–2021–0137; FF09E22000 FXES11130900000 212]

RIN 1018–BF63

Wildlife and Fisheries; Compensatory Mitigation Mechanisms

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Fish and Wildlife Service (Service) seeks comments to assist us in developing a proposed rule establishing objectives, measurable performance standards, and criteria for use, consistent with the Endangered Species Act, for species conservation banking. The terms ''you'' or ''your'' in this document refer to those members of the public from whom we seek response. The terms ''we'' and ''us'' refer to the Service.

DATES: Submit comments on or before September 26, 2022.

ADDRESSES:

Comment submission: You may submit comments, identified by docket number FWS–HQ–ES–2021–0137, by any of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–HQ–ES–2021–0137, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''
- *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: Docket No. FWS–HQ–ES–2021–0137; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will not accept email or faxes. All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on

submitting comments and other information on the rulemaking process, see Public Participation in **SUPPLEMENTARY INFORMATION.**

Document availability: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and search for FWS–HQ–ES–2021–0137.

FOR FURTHER INFORMATION CONTACT: Craig Aubrey, Chief, Division of Environmental Review, U.S. Fish and Wildlife Service, 703–358–2442. 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

Section 329 of the 2021 National Defense Authorization Act (NDAA 2021) (Pub. L. 116–283, Jan. 3, 2020) requires the Service to issue regulations of general applicability establishing objectives, measurable performance standards, and criteria for use for species conservation banking programs, consistent with the ESA. The NDAA 2021 states that, to the maximum extent practicable, the regulatory standards and criteria shall maximize available credits and opportunities for mitigation, provide flexibility for characteristics of various species, and apply equivalent standards and criteria to all mitigation banks. The NDAA 2021 also requires us to publish an advance notice of proposed rulemaking (ANPR) within 1 year of enactment of the NDAA 2021.

The Service has a long history collaborating with both private and public entities in the establishment and oversight of mitigation and conservation banks, and other compensatory mitigation projects. In 2003, we issued the Guidance for the Establishment, Use, and Operation of Conservation Banks (68 FR 24753, May 8, 2003), which was intended to help Service personnel evaluate conservation bank proposals. One of the stated goals of the ESA is to ''provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.'' Conservation banks contribute to the recovery of listed species and help reduce threats such as habitat fragmentation and lack of habitat connectivity by consolidating and managing priority habitat areas in a reserve network. So far, 173 Service-approved conservation banks have protected approximately 260,000 acres of habitat for 57 species listed under the ESA.

As the conservation banking program continues to grow, it is important to ensure consistency, transparency, and predictability for project proponents and mitigation providers. The development and application of equivalent standards and criteria for conservation banks and all habitat-based compensatory mitigation mechanisms is in the interest of industry, mitigation providers, and species conservation. This proposed rule will focus on conservation banking programs for ESA-listed, proposed, and candidate species, including maximizing available credits.

Conservation banks typically adhere to basic standards for providing real estate protection, ecological management, and funding. The Service intends to apply equivalent standards to all habitat-based compensatory mitigation mechanisms (including conservation banks, in-lieu fee programs, and permittee-responsible mitigation) for covered species.

Species conservation banks sometimes overlap with wetland mitigation banks established under the joint regulation Compensatory Mitigation for Losses of Aquatic Resources (33 CFR parts 325 and 332, and 40 CFR part 230) (73 FR 19594, April 10, 2008; hereafter the ''2008 Rule'') administered by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency, so the Service intends this proposed rule to maintain compatibility with the 2008 Rule. The 2008 Rule applies equivalent standards to each covered mitigation mechanism (in-lieu fee programs, permittee-responsible mitigation, and mitigation banks) to help ensure compensatory mitigation results in successful, durable, and sustainable resource functions regardless of mechanism.

The proposed rule will not modify any of the Service's existing authorities for either recommending or requiring mitigation. Instead, it will address regulatory standards and criteria for compensatory mitigation mechanisms, consistent with the ESA and its implementing regulations.

The Service will analyze the proposed regulation 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 Chapters 1–15).

Information Requested

The Service requests your comments regarding the content of the proposed regulation, including appropriate objectives, measurable performance standards (including metrics for ecological benefit and additionality) for habitat and species, and criteria for use of credits offered by bank operators to satisfy a mitigation requirement consistent with the ESA. We also request your comments regarding how to ensure the regulatory standards and criteria maximize the accrual of functions measured as available credits and opportunities for mitigation to the maximum extent practicable, provide flexibility for characteristics of various species, and apply equivalent standards and criteria such as real estate protections, ecological management, and funding to all species conservation banks. We also request comment on how best to account for risk and uncertainty when conservation banks are used to achieve a given conservation objective.

The Service is particularly interested in comments on the following:

(1) What level of detail should be in the proposed rule to ensure equivalent standards are consistently applied to all forms of compensatory mitigation, including equivalence in covering the costs of mitigation whether they are on public or private lands?

(2) What level of detail should be in the proposed rule regarding durability and additionality standards to both achieve equivalent standards across mitigation mechanisms and provide species conservation?

(3) How should the proposed rule incorporate monitoring, financial assurances, and publicly accessible mitigation data tracking systems to ensure a compensatory mitigation mechanism is meeting its performance standards?

(4) What are the hurdles to species bank establishment that are within the Service's authority to address through regulation?

(5) How should the proposed rule align with 2008 Rule provisions to maintain compatibility between mitigation banks and species banks where appropriate?

(6) How should the Service address potential bank projects on Federal and Tribal lands or on other lands with unique ownership considerations and/or some degree of existing protection?

Public Participation

We seek information from knowledgeable members of the public, including mitigation providers, small

businesses, Tribes, developers, and others. All submissions received must include the Service docket number for this document. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal information—may be made publicly available. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2022–15708 Filed 7–26–22; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 87, No. 143
Wednesday, July 27, 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; Correction

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 or other forms of information technology.

Comments regarding this information collection received by August 26, 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.

National Agricultural Statistics Service

Title: Agricultural Resource Management and Chemical Use Surveys—Substantive Change.

OMB Control Number: 0535–0218.

Summary of Collection: The Department of Agriculture published a document in the **Federal Register** on July 22, 2022, Volume 87, page 43780 concerning a request for comments for the substantive change request on the Information Collection ''Agricultural Resource Management and Chemical Use Surveys'' OMB control number 0535–0218. In this FRN, it was stated there was a decrease in burden due to the removal of questions from the Production Practices Report (Potatoes) that were previously requested by the USDA Office of Pest Management Policy (OPMP). The removal of questions reduced the average time per respondent from 50 to 35 minutes.

That statement needs to be corrected to state, ''there is an overall increase in number of responses burden due to presurvey, initial mailings, and possible electronic mail follow-up for the ARMS Phase 2 and Vegetable Chemical Use Surveys, resulting in a new total of 109,277 hours.

There is no change to the number of respondents and frequency of responses. The burden needs to be updated from 106,015 to 109,277.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–16097 Filed 7–26–22; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0040]

Notice of Request for Extension of Approval of an Information Collection; Plum Pox Compensation

AGENCY: Animal and Plant Health Inspection Service, Agriculture (USDA).

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations that provide for the payment of compensation to owners of commercial stone fruit orchards and fruit tree nurseries whose trees or nursery stock were destroyed to eradicate plum pox virus.

DATES: We will consider all comments that we receive on or before September 26, 2022.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2022–0040 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2022–0040, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for plum pox compensation, contact Ms. Lynn Evans-Goldner, National Policy Manager, PPQ, APHIS, 4700 River Road Unit 150, Riverdale, MD 20737; (301) 851–2286; *lynn.evans-goldner@usda.gov.* For information on the information collection reporting process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Plum Pox Compensation.

OMB Control Number: 0579–0159.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture, either independently or in cooperation with the States, to carry out operations or

measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests, such as plum pox virus (PPV), that are new, not widely distributed, or not known to occur within the United States.

Plum pox is an extremely serious viral disease of plants that can affect many *Prunus* (stone fruit) species, including plum, peach, apricot, almond, nectarine, and sweet and tart cherry. A number of wild and ornamental *Prunus* species may also be susceptible to this disease. Infection eventually results in severely reduced fruit production, and the fruit that is produced is often misshapen and blemished. PPV is transmitted under natural conditions by several species of aphids. The long distance spread of PPV occurs by budding and grafting with infected plant material and by farm tools/equipment, and through movement of infected budwood, nursery stock, and other plant parts. There are no known effective methods for treating trees or other plant material infected with PPV, nor are there any known effective preventive treatments. Without effective treatments, the only option for preventing the spread of the disease is the destruction of infected and exposed trees and other infected plant material.

The regulations in ''Subpart L—Plum Pox'' (7 CFR 301.74–301.74–5), among other things, quarantine areas of the United States where PPV has been detected, restrict the interstate movement of host material from quarantined areas, and when the Secretary of Agriculture declares an extraordinary emergency, provides for compensation to owners of commercial stone fruit orchards and fruit tree nurseries whose trees or nursery stock were destroyed to eradicate PPV. Eligible applicants must submit an application for compensation with a supplemental indemnity claim statement. This may include providing direct deposit information for claim payment and applying for a data universal numbering system number, if needed. Applicants must also maintain or provide records verifying losses and destruction of stocks, and respond to an emergency action notification if issued by the Animal and Plant Health Inspection Service.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 1 hour per response.

Respondents: Owners and affiliates of stone fruit orchards and fruit tree nurseries and State plant health officials.

Estimated annual number of respondents: 2.

Estimated annual number of responses per respondent: 3.

Estimated annual number of responses: 5.

Estimated total annual burden on respondents: 5 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 21st day of July 2022.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–16055 Filed 7–26–22; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0043]

Notice of Request for Extension of Approval of an Information Collection; Approval of Laboratories To Conduct Official Testing

AGENCY: Animal and Plant Health Inspection Service, Agriculture (USDA).

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the approval of laboratories to conduct official disease testing.

DATES: We will consider all comments that we receive on or before September 26, 2022.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2022–0043 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2022–0043, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the approval of laboratories to conduct official testing, contact Dr. Suelee Robbe-Austerman, Director, National Veterinary Services Laboratories, Diagnostics and Biologics, Veterinary Services, APHIS, 1920 Dayton Avenue, Ames, IA 50010; (515) 337–7301; *Suelee.Robbe-Austerman@usda.gov.* For information on the information collection reporting process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Approval of Laboratories to Conduct Official Testing.

OMB Control Number: 0579–0472.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (the Act, 7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) is authorized, among other things, to detect, control, or eradicate pests or diseases of livestock or poultry. To carry out this mission, APHIS regulates

approval or certification for laboratories conducting tests for disease management as well as live animal interstate movement, import and export.

In the 9 CFR, § 71.22 provides the requirements for APHIS approval or certification of laboratories to conduct official testing for disease management as well as live animal interstate movement, import, and export. APHIS approval is required for State, university, and private laboratories conducting official testing for certain regulated diseases.

APHIS approval or certification requires various information collection activities. The regulations facilitate the approval of additional laboratories in emergency situations and serve to simplify regulatory oversight and compliance by providing defined application and inspection procedures using a checklist and approval agreement. The regulations also set requirements for testing procedures and methods, biosecurity measures, the use of quality systems and controls with documented guidelines and verification forms, details regarding training and reporting, recordkeeping, and program standards. In addition, laboratories must conduct testing using APHIS-approved assay methods and reporting, request test exemptions if the minimum number of tests are not performed during two consecutive reporting periods, and submit sample copies of diagnostic reports. The approved laboratories must maintain approval status and provide proof of accreditation status and set forth general terms for probation status, suspension or rescission of approval, and appeals. Laboratories may also request removal of their approved status.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 7.1 hours per response.

Respondents: State animal health officials and laboratory directors.

Estimated annual number of respondents: 402.

Estimated annual number of responses per respondent: 13.

Estimated annual number of responses: 5,306.

Estimated total annual burden on respondents: 37,697 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 21st day of July 2022.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–16054 Filed 7–26–22; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–22–TELECOM–0045]

60-Day Notice of Proposed Information Collection: Distance Learning and Telemedicine Loan and Grant Program; OMB Control No.: 0572–0096

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the United States Department of Agriculture (USDA) Rural Utilities Service 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 26, 2022 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically by the Federal eRulemaking Portal: Go to *https://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–0045). 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: Distance Learning and Telemedicine Grants Program; OMB Control No.: 0572–0096) 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.*

FOR FURTHER INFORMATION CONTACT: Robin M. Jones, Management Analyst, Rural Development Innovation Center—Regulations Management Division, United States Department of Agriculture, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 772–1172. Email: *robin.m.jones@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation implementing provisions of the Paperwork Reduction Act of 1995 requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities. This notice identifies the following information collection that Rural Utilities Service is submitting to OMB as extension to an existing collection with Agency adjustment.

Title: Distance Learning and Telemedicine Grant Program.

OMB Control Number: 0572–0096.

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 2.45 hours per response.

Respondents: Business or other for profit, not-for-profit institutions, and State.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 6,840.

Estimated Total Annual Burden on Respondents: 17,814 hours.

Abstract: The Rural Utilities Service's (RUS) Distance Learning and Telemedicine (DLT) Loan and Grant program provides loans and grants for advanced telecommunications services to improve rural areas' access to educational and medical services. The various forms and narrative statements required are collected from the applicants (rural community facilities, such as schools, libraries, hospitals, and medical facilities, for example). The purpose of collecting the information is to determine such factors as eligibility of the applicant; the specific nature of the proposed project; the purposes for which loan and grant funds will be used; project financial and technical feasibility; and, compliance with applicable laws and regulations. In addition, for grants funded pursuant to the competitive evaluation process, information collected facilitates RUS' selection of those applications most consistent with DLT goals and objectives in accordance with the authorizing legislation and implementing regulation.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Copies of this information collection can be obtained from Robin M. Jones, Rural Development Innovation Center—Regulations Management Division, at (202) 772–1172. Email: *robin.m.jones@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. 2022–16042 Filed 7–26–22; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–22–TELECOM–0044]

60-Day Notice of Proposed Information Collection: Equipment Contract, RUS 395, for Telecommunications and Broadband Borrowers; OMB Control No.: 0572–0149

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 26, 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–0044). 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.: 0572–0149) 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: Robin M. Jones, Management Analyst, Rural Development Innovation Center—Regulations Management Division, United States Department of Agriculture, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 772–1172. Email: *robin.m.jones@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 Rural Utilities Service is submitting to OMB as extension to an existing collection with Agency adjustment.

Title: Equipment Contract, RUS 395, for Telecommunications and Broadband Borrowers.

OMB Control Number: 0572–0149.

Expiration Date of Approval: December 31, 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 0.71 hours per response.

Respondents: Business or other for profit, not-for-profit institutions.

Estimated Number of Respondents: 28.

Estimated Number of Responses per Respondent: .71.

Estimated Number of Responses: 161.

Estimated Total Annual Burden on Respondents: 114 hours.

Abstract: The RUS manages the Telecommunications loan program and the Rural Broadband program, to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities. RUS has established the use of certain standardized forms for materials, equipment, and construction of electric and telecommunications systems. The use of standard forms, construction contracts, and procurement procedures help to assure that appropriate standards and specifications are maintained by the borrower in order to not adversely affect RUS's loan security and ensure that loan and loan guarantee funds are effectively used for the intended purpose(s). The reporting burden covered by this collection of information consist of forms to support a request for funding for equipment contracts for telecommunications and broadband borrowers.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information will have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Copies of this information collection can be obtained from Robin M. Jones, Rural Development Innovation Center—Regulations Management Division, at (202) 772–1172. Email: *robin.m.jones@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. 2022–16028 Filed 7–26–22; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Certain Stainless Steel Wire Rods From India: Final Results of the Expedited Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this expedited sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on certain stainless steel wire rods (SSWR) from India would be likely to lead to continuation or recurrence of dumping as indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable July 27, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher Williams or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5166 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2022, Commerce published the notice of initiation of the sunset review of the AD order on SSWR from India [1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] In accordance with 19 CFR 351.218(d)(1)(i) and (ii), Commerce received a notice of intent to participate in this sunset review from the domestic interested parties [3] within 15 days after the date of publication of the *Initiation Notice.*[4] The domestic interested parties claimed interested party status under sections 771(9)(C) of the Act.

Commerce received an adequate substantive response to the *Initiation Notice* from the domestic interested parties within the 30-day period specified in 19 CFR 351.218(d)(3)(i).[5] Commerce received no substantive responses from any respondent interested parties. Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.[6] In accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited, *i.e.,* 120-day sunset review of the *Order.*

Scope of the Order

The merchandise covered by the *Order* are SSWR from India, which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. The SSWR subject to the *Order* are currently classifiable under subheadings 7221.00.0005, 7221.00.0017, 7221.00.0018, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the *Order* is dispositive. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum. A list of topics discussed in the Issues and Decision Memorandum is included as the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Review

Pursuant to sections 751(c) and 752(c) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping and that the magnitude of the margins of dumping likely to prevail is up to 48.80 percent.

Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218(e)(1)(ii)(C)(2) and 19 CFR 351.221(c)(5)(ii).

Dated: July 15, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[1] *See Antidumping Duty Order: Certain Stainless Steel Wire Rods from India,* 58 FR 63335 (December 1, 1993) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 25617 (May 2, 2022) (*Initiation Notice*).

[3] The domestic interested parties are Carpenter Technology Corporation, North American Stainless, and Universal Stainless & Alloy Products, Inc.

[4] *See* Domestic Interested Parties' Letter, ''Five Year ('Sunset') Review of the Antidumping Duty Order on Stainless Steel Wire Rod from India—Notice of Intent to Participate,'' dated May 12, 2022.

[5] *See* Domestic Interested Parties' Letter, ''Five-Year ('Sunset') Review of Antidumping Duty Order on Stainless Steel Wire Rod from India—Domestic Interested Parties' Substantive Response,'' dated June 1, 2022.

[6] *See* Commerce's Letter, ''Sunset Reviews Initiated on May 2, 2022,'' dated June 21, 2022.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Order on Stainless Steel Wire Rods from India,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[FR Doc. 2022–16085 Filed 7–26–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC204]

Fisheries of the Exclusive Economic Zone off Alaska; Enforcement, Compliance Assistance, and General Outreach and Education Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: NOAA Office of Law Enforcement, Alaska Division, in collaboration with Sustainable Fisheries Division, Workforce Violence Prevention and Response (WVPR) Program, and Fisheries Monitoring and Analysis Division will host/attend a public outreach meeting with public and fishing industry constituents. Topics will include ensuring a safe working environment for observers, WVPR's role in working with/supporting observers, Limited Access Privilege Program operating requirements, prohibited species issues, recordkeeping and reporting regulations, and open question/answer session.

DATES: The public meeting will be held from July 26, 2022, from 9 a.m. to 12:30 p.m. Alaska Daylight Saving Time.

ADDRESSES: The public meeting will be held at the Grand Aleutian Hotel, Makushin conference room, 498 Salmon Way, Unalaska, AK 99692.

Remote Attendance Information: (US) +1 401–594–3268 PIN: 291 992 370#

FOR FURTHER INFORMATION CONTACT: Alex Perry, 907–271–3021.

SUPPLEMENTARY INFORMATION: No rulemaking or decision-making will result from these meetings, and NOAA is not seeking recommendations, advice or consensus from any entity.

Dated: July 25, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–16220 Filed 7–25–22; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC124

Taking Marine Mammals Incidental to the Hampton Roads Bridge Tunnel Expansion Project in Norfolk, Virginia

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

ACTION: Notice of issuance of modified letters of authorization.

SUMMARY: On January 28, 2022, NMFS received a request from the Hampton Roads Connector Partners (HRCP) to modify Letters of Authorization (LOA) that were issued to HRCP on April 2, 2021, as part of incidental take regulations. These regulations govern the unintentional taking of marine mammals incidental to construction activities associated with the Hampton Roads Bridge Tunnel Expansion Project (HRBT) in Norfolk, Virginia, over the course of 5 years (2021–2026). The modification is due to design updates which decrease the number of piles installed, require fewer hours of pile installation, and reduce the number of pile driving days. Prescribed mitigation measures were modified to reflect the change in design. We have determined that the modification will not result in an increase in take that would exceed the limits authorized under the original LOA. Therefore, the total amount of authorized taking remains the same.

DATES: This modified LOA is effective through April 1, 2026.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as the issued modified LOA, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request and Analysis

On November 19, 2019, NMFS received an application from HRCP requesting authorization for take of marine mammals incidental to construction activities related to a major road transport infrastructure project along the existing I–64 highway in Virginia, consisting of roadway improvements, trestle bridges, and bored tunnels crossing Hampton Roads between Norfolk and Hampton. On October 7, 2020 (85 FR 63256), NMFS published a notice of receipt (NOR) of HRCP's application in the **Federal Register**, requesting comments and information related to the request. The proposed rule was subsequently published in the **Federal Register** on January 8, 2021 (86 FR 1588) and requested comments and information from the public. A final rule and associated regulations were published in the **Federal Register** on April 2, 2021 (86 FR 17458; 50 CFR part 217, subpart W—Taking And Importing Marine Mammals Incidental to Hampton Roads Connector Partners Construction at Norfolk, Virginia).

On January 28, 2022, HRCP notified NMFS of their request for modification of the LOA. Following receipt of the original LOA, HRCP has implemented and adhered to the prescribed suite of mitigation and monitoring measures which provide the means of effecting the least practicable adverse impact on the affected species or stocks and their habitat.

Preliminary designs for South Island included the installation of numerous 24-inch and 30-inch steel pipe piles as Settlement Reduction and Deep Foundation piles to support the island expansion and tunnel approach structure. It was anticipated that these piles would be driven in open water prior to filling for island creation. However, during design optimization, the contractor has opted to advance a design alternative utilizing a filled cofferdam. The construction activities will include permanent installation of the cofferdam walls in open water. The cofferdam walls, and associated splash walls, will be constructed with a combination of steel sheet and steel pipe piles up to 60-inches in size.

The modification eliminated the following piles from the existing design plan:

- 50, 30-inch steel pipe, concrete-filled Deep Foundation piles;
- 394, 24-inch steel pipe Settlement Reduction piles; and
- 448 panels of sheet piles from the South Island Expansion.

Instead, HRCP plans to install the following in-water piles:

- 100 sheet pile panels at the South Island Expansion Cofferdam;
- 21, 40-inch steel piles at the South Island Expansion Cofferdam;
- 250, steel pipe piles 52-inches to 60-inches in size at the South Island Expansion Splash/Sea Wall and Cofferdam; and
- 12, 24-inch concrete square permanent piles at the South Island Trestle Abutment.

The change in design plan requires the establishment and monitoring of appropriate shutdown zones and harassment zones for the new piles, which have been included in the modified LOA. Additionally, the shutdown zones and harassment zones related to the eliminated piles were removed from the modified LOA. These changes are illustrated in Tables 1 and 2 below.

The revised action associated with the modified LOA entails fewer pile installations/removals with less total hours of driving time over fewer active driving days. Therefore, it is reasonable to predict that take of marine mammals would be fewer than were considered in our analysis conducted for the rule.

The modification to the LOA is expected to decrease takes by Level A and Level B harassment by reducing both the duration and intensity of marine mammals' exposure to in-water sound at levels that could result in injury or behavioral impacts.

Specifically, the Level B harassment zones associated with the installation of new piles and sheets are smaller than or equivalent to those of the piles being eliminated, as illustrated in Table 1 below. The modification would result in harassment zones that are smaller or equivalent to those in the original LOA, and fewer days of activity with the potential to cause harassment, which, together, would be expected to result in a reduction in the number of takes by Level B harassment. However, HRCP did not request and NMFS has not authorized any changes to the take numbers contained in the original LOA as a conservative measure to ensure that take limits are not exceeded.

TABLE 1—CHANGES TO MODIFIED LOA LEVEL B HARASSMENT ZONES FOR DIFFERENT PILE SIZES AND TYPES AND METHODS OF INSTALLATION WITH NO ATTENUATION

Modification action	Construction component	Pile type	Level B isopleth (m), unattenuated	# Days
Vibratory Hammer—South Island				
Eliminated	Deep Foundation Piles	30-in steel piles, concrete filled	13,594	9
Eliminated	Settlement Reduction Piles	24-in steel piles	5,412	66
DTH Pile Installation—South Island				
Eliminated	Deep Foundation Piles	30-in steel piles, concrete filled	11,659	9
Impact Hammer—North Trestle				
Included	Cofferdam	52- to 60-inch steel piles	2,154	13
Included	Cofferdam	40-inch steel piles	3,981	21
Included	Trestle Abutment	24-inch concrete square piles	117	12

TABLE 2—CHANGES TO MODIFIED LOA SHUTDOWN ZONES WITH ATTENUATION AND WITH NO ATTENUATION FOR ALL AUTHORIZED SPECIES

Modification action	Method	Pile size/type	Strikes/pile	Number piles installed or removed/day	Cetaceans—shutdown zones (m)			Pinnipeds—shutdown zones (m)	# Days
					LF	MF	HF		
No Attenuation									
Eliminated	Down-the-Hole Installation.	30-in Pipe, Steel, concrete filled.	36,000 strikes	6	1,950	70	100	15/35	9
Included	Impact Installation	40-inch Pipe, Steel	200 strikes	3	1,320	50	100	15/35	2
Included		52- to 60-inch Pipe, Steel.	200 strikes	3	970	35	100	15/35	13

TABLE 2—CHANGES TO MODIFIED LOA SHUTDOWN ZONES WITH ATTENUATION AND WITH NO ATTENUATION FOR ALL AUTHORIZED SPECIES—Continued

Modification action	Method	Pile size/type	Strikes/pile	Number piles installed or removed/ day	Cetaceans—shutdown zones (m)			Pinnipeds—shutdown zones (m)	# Days
					LF	MF	HF		
With Attenuation									
Eliminated	Impact Installation	30-in Pipe, Steel, concrete filled.	20 strikes	6	135	10	50	25	85
Included		40-inch Pipe, Steel	200 strikes	3	450	20	100	25	5
Included		52- to 60-inch Pipe, Steel.	200 strikes	3	330	20	100	25	71

While the new Level A harassment zones associated with impact driving under the modified LOA (Table 2) are larger in some instances than the injury zones that were established under the original LOA, there are significantly fewer days of in-water installation planned for the modification (91 days) compared to the original LOA (151 days). Therefore, take of marine mammals by Level A harassment would be expected to be reduced. Additionally, HRCP plans to eliminate installation of 50 30-inch steel pipe, concrete-filled piles that were planned to be installed using down-the-hole (DTH) methods. As shown above, these piles have the largest Level A harassment zones of any of the piles that would have been driven under the original LOA. Elimination of these DTH installations in the original LOA also supports a conclusion that, overall, expected Level A harassment events will be reduced under the modified LOA.

Of note, marine mammal monitoring during in-water construction up to January 2022 has recorded two potential takes by Level A harassment since the start of LOA construction in July 2021. HRCP was authorized 3,359 Level A harassment takes split between the 5 years of the LOA and five authorized species. The modifications to the mitigation and monitoring requirements, which include establishing new shutdown and harassment zones for 40-inch steel piles and 52- to 60-inch pipe piles, create a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring, pursuant to the adaptive management provisions set forth in the preamble in the final rule (see ''Mitigation'' and ''Monitoring and Reporting'' sections of the final rule (86 FR 17458; April 2, 2021), for a detailed description of the mitigation and monitoring measures and the goals of the measures).

In summary, the modifications would result in a decrease in the total number of active hours of installation/removal by 855 hours and a decrease in the total number of days of in-water installation/removal by 60 days at South Island. The number of sheet piles required would decrease from 448 to 100, while the number of steel pipe piles would decrease from 901 to 271. Given these modifications and the associated decreases in hours and days of installation/removal and number of piles, as well as the reduced impacts and resulting take, all of which fall within the scope of the rule, we have determined that the modified shutdown zones have a reasonable likelihood of more effectively reducing potential adverse impacts to marine mammals and would provide the means of effecting the least practicable adverse impact on the affected species or stocks and their habitat.

The described modification of the LOA does not alter the original scope of activity analyzed or the impact analysis in a manner that materially affects the basis for the original findings under the final rule, both annually and over the 5 year period of effectiveness. Accordingly, we have determined that the take authorized in this LOA will have a negligible impact on the affected species or stocks and, separately, that the take will be of small numbers.

Authorization

NMFS has issued a modified LOA to HRCP authorizing the take of marine mammals for the reasons described above, for the potential harassment of small numbers of marine mammals incidental to construction activities associated with the Hampton Roads Bridge Tunnel Expansion Project provided the mitigation, monitoring and reporting requirements of the rulemaking are incorporated.

Dated: July 22, 2022.

Shannon Bettridge,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–16138 Filed 7–26–22; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Information and Regulatory Affairs (''OIRA''), of the Office of Management and Budget (''OMB''), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before August 26, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0078, at *https://*

comments.cftc.gov/FederalRegister/PublicInfo.aspx.

Or by either of the following methods:

• *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

• *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Andrew Chapin, Associate Chief Counsel, Market Participants Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418–5465; email: *achapin@cftc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers (OMB Control No. 3038–0078).

Abstract: On April 3, 2012, the Commission adopted Commission regulation 1.71 (Conflicts of interest policies and procedures by futures commission merchants and introducing brokers)[2] pursuant to sections 4d(c)[3] of the Commodity Exchange Act (''CEA'').[4] Commission regulation 1.71 generally requires that, among other things, generally that, among other things, futures commission merchants (''FCM'')[5] and introducing brokers (''IB'')[6] develop conflicts of interest procedures and disclosures, adopt and implement written policies and procedures reasonably designed to ensure compliance with their conflicts of interest and disclosure obligations, and maintain specified records related to those requirements.[7] The Commission believes that the information collection obligations imposed by Commission regulation 1.71 are essential to (i) ensuring that FCMs and IBs develop and maintain the conflicts of interest systems, procedures and disclosures required by the CEA, and Commission regulations, and (ii) the effective evaluation of these registrants' actual compliance with the CEA and Commission regulations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.[8] On May 25, 2022, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 87 FR 31862 (''60-Day Notice''). The Commission did not receive any relevant comments on the 60-Day Notice.

Burden Statement: The Commission is revising its estimate of the burden for this collection to reflect the current number of respondents and estimated burden hours. The respondent burden for this collection is estimated to be as follows:

Number of Registrants: 1,065.

Estimated Average Burden Hours per Registrant: 44.5.

Estimated Aggregate Burden Hours: 47,392.

Frequency of Recordkeeping: Annually or on occasion.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: July 22, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–16106 Filed 7–26–22; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

[2] 17 CFR 1.71.

[3] 7 U.S.C. 6d(c).

[4] 77 FR 20198.

[5] For the definition of FCM, see section 1a(28) of the CEA and Commission regulation 1.3. 7 U.S.C. 1a(49) and 17 CFR 1.3.

[6] For the definitions of IB, see section 1a(31) of the CEA and Commission regulation 1.3. 7 U.S.C. 1a(33) and 17 CFR 1.3.

[7] See 17 CFR 1.71.

[8] 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8 (b)(3)(vi).

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Information and Regulatory Affairs (''OIRA''), of the Office of Management and Budget (''OMB''), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before August 26, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0012, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

• *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581;

• *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[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 *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Adam Charnisky, Market Analyst, Division of Market Oversight, Commodity Futures Trading Commission, (312) 596–0630; email*: acharnisky@cftc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Futures Volume, Open Interest, Price, Deliveries and Purchases/Sales of Futures for Commodities or for Derivatives Positions (OMB Control No. 3038–0012). This is a request for extension of a currently approved information collection.

Abstract: Commission Regulation 16.01 requires the U.S. futures exchanges to publish daily information on the items listed in the title of the collection. The information required by this rule is in the public interest and is necessary for market surveillance. This rule is promulgated pursuant to the Commission's rulemaking authority contained in Section 5 of the Commodity Exchange Act, 7 U.S.C. 7 (2010).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.[2] On May 25, 2022, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 87 FR 31863 (''60-Day Notice''). The Commission did not receive any relevant comments on the 60-Day Notice.

Burden Statement: The Commission is revising its estimate of the burden for this collection to reflect the current number of respondents and estimated burden hours. The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 17.

Estimated Average Burden Hours per Respondent: 250.[3]

Estimated Total Annual Burden Hours: 4,250 hours.

Frequency of Collection: Daily.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: July 22, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–16107 Filed 7–26–22; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

[2] 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8 (b)(3)(vi).

[3] The Commission estimates that its Data, Market and Surveillance Staff will expend approximately 1 hour per day on each respondent/response over 250 trading days to collect and analyze the information submitted.

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0051]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau or CFPB) is requesting to extend the Office of Management and Budget's (OMB's) approval for an existing information collection titled ''Generic Information Collection Plan for Qualitative Consumer Education, Engagement, and Experience Information Collections'' approved under OMB Control Number 3170–0036.

DATES: Written comments are encouraged and must be received on or before September 26, 2022 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2022–0051 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.

Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier. Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan for Qualitative Consumer Education, Engagement and Experience Information Collections.

OMB Control Number: 3170–0036.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, State, local, or tribal governments; private sector.

Estimated Number of Respondents: 48,000.

Estimated Total Annual Burden Hours: 36,000.

Abstract: Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, section 1021(c)) one of the Bureau's primary functions is to conduct financial education programs. The Bureau seeks to obtain approval of a generic information collection plan to collect qualitative data on effective financial education strategies and consumer experiences in the financial marketplace from a variety of respondents (including financial educators and consumers). The Bureau will collect this information through a variety of methods including in-person meetings, interviews, focus groups,

qualitative surveys, online discussion forums, social media polls, and other qualitative methods as necessary. The information collected through these processes will increase the Bureau's understanding of consumers' financial experiences, financial education and empowerment programs, and practices that can improve financial decision-making skills and outcomes for consumers. This information will also enable the Bureau to better communicate to consumers about the availability of Bureau tools and resources that consumers can use to make better informed financial decisions.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–16111 Filed 7–26–22; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2012–0055]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Flammability Standards for Children's Sleepwear

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC or Commission), announces that the Commission has submitted to the Office of Management and Budget (OMB) a request for extension of approval for a collection of information associated with the Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X and the Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14, approved previously under OMB Control No. 3041–0027. On May 11, 2022, CPSC published a notice in the **Federal Register** announcing the agency's intent to seek this extension. CPSC received no comments in response to that notice. Therefore, by publication of this notice, the Commission announces that CPSC has submitted to the OMB a request for extension of approval of this collection of information.

DATES: Written comments on this request for extension of approval of information collection requirements should be submitted by August 26, 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. In addition, written comments that are sent to OMB also should be submitted electronically at: *http://www.regulations.gov,* under Docket No. CPSC–2012–0055.

FOR FURTHER INFORMATION CONTACT: Cynthia Gillham, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7991, or by email to: *cgillham@cpsc.gov.*

SUPPLEMENTARY INFORMATION: On May 11, 2022, CPSC published a notice in the **Federal Register** announcing the agency's intent to seek an extension for this information collection. 87 FR 28817. CPSC received no comments in response to that notice. Accordingly, CPSC seeks to renew the following currently approved collection of information:

Title: Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; and the Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14.

OMB Number: 3041–0027.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Manufacturers and importers of children's sleepwear.

Estimated Number of Respondents: Based on a review of past inspections and published industry information, CPSC staff estimates that there could be as many as 866 domestic children's apparel manufacturers in the United States subject to the rule. However, not all these manufacturers will produce children's sleepwear. Therefore, this figure is likely an overestimate of the actual number of firms performing tests and creating records in any given year. Furthermore, using the Harmonized Tariff System (HTS) codes for children's sleepwear, CPSC staff found approximately 3,641 importers that supply children's sleepwear to the U.S. market. Many of the 866 domestic manufacturers, along with many large U.S. retailers, may be among the importers. However, if all 866 U.S. producers and, in addition, all 3,641 importers did introduce new children's sleepwear garments each year, the total number of firms subject to the CPSC recordkeeping requirements each year would be 4,507 (866 + 3,641). As noted, the actual number of firms is likely lower.

Estimated Time per Response: Testing and recordkeeping of each sleepwear item is approximately 3 hours.

Total Estimated Annual Burden: The 50 largest domestic manufacturers and the 100 largest importers may each introduce an average of 100 new children's sleepwear items annually. The annual burden for the 50 large domestic manufacturers and the 100 largest importers is estimated at 45,000 hours for testing and recordkeeping (150 firms × 100 items × 3 hours). Without adjusting for possible double-counting, CPSC staff estimates that the remaining 816 manufacturers and 3,541 importers may each introduce an average of 10 new children's sleepwear items, for a total testing and recordkeeping burden of 130,710 hours (4,357 × 10 items × 3 hours.) Therefore, the total estimated potential annual burden imposed by the standard and regulations on all manufacturers and importers of children's sleepwear will be about 175,710 hours (45,000 + 130,710). The annual cost to the industry is estimated to be $12,369,984 based on an hourly wage of $70.40 × 175,710 hours.[1]

Description of Collection: The Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (16 CFR part 1615) and the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (16 CFR part 1616) address the fire hazard associated with small-flame ignition sources for children's sleepwear manufactured for sale in, or imported into, the United States. The standards

[1] See Table 4: Employer Costs for Employee Compensation News Release—2021 Q04 Results (*bls.gov*).

also require manufacturers and importers of children's sleepwear to collect information resulting from product testing, and maintenance of the testing records. 16 CFR part 1615, subpart B; 16 CFR part 1616; subpart B.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–16087 Filed 7–26–22; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2012–0056]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Safety Standard for Omnidirectional Citizens Band Base Station Antennas

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC or Commission), announces that the Commission has submitted to the Office of Management and Budget (OMB) a request for extension of approval for a collection of information associated with the Commission's Safety Standard for Omnidirectional Citizens Band Base Station Antennas, approved previously under OMB Control No. 3041–0006. On May 11, 2022, CPSC published a notice in the **Federal Register** announcing the agency's intent to seek this extension. CPSC received no comments in response to that notice. Therefore, by publication of this notice, the Commission announces that CPSC has submitted to the OMB a request for extension of approval of this collection of information.

DATES: Written comments on this request for extension of approval of information collection requirements should be submitted by August 26, 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. In addition, written comments that are sent to OMB also should be submitted electronically at: *http://www.regulations.gov,* under Docket No. CPSC–2012–0056.

FOR FURTHER INFORMATION CONTACT: Cynthia Gillham, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7991, or by email to: *cgillham@cpsc.gov.*

SUPPLEMENTARY INFORMATION: On May 11, 2022, CPSC published a notice in the **Federal Register** announcing the agency's intent to seek an extension for this information collection. 87 FR 28816. CPSC received no comments in response to that notice. Accordingly, CPSC seeks to renew the following currently approved collection of information:

Title: Safety Standard for Omnidirectional Citizens Band Base Station Antennas.

OMB Number: 3041–0006.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Manufacturers, importers, and private labelers of omnidirectional citizens band base station antennas.

Estimated Number of Respondents: Approximately 10 firms supply omnidirectional citizen band base station antennas.

Estimated Time per Response: Based on the information compiled by manufacturers, importers, and private labelers of antennas to test and maintain records for certificates of compliance, we estimate an average of 220 hours per firm for annual testing and recordkeeping.

Total Estimated Annual Burden: 2,200 hours (10 firms × 220 hours).

General Description of Collection: The Safety Standard for Omnidirectional Citizens Band Base Station Antennas (16 CFR part 1204) establishes performance requirements for omnidirectional citizens band base station antennas to reduce unreasonable risks of death and injury that may result if an antenna contacts overhead power lines while being erected or removed from its site. The regulations implementing the standard (16 CFR part 1204, subpart B) require manufacturers, importers, and private labelers of antennas subject to the standard to test the antennas for compliance with the standard and to maintain records of that testing. Based on an average hourly wage of $71.82,[1] the total annual cost to the industry to perform the required testing and maintain the records is approximately $158,000 ($71.82 times 2,200 hours).

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–16088 Filed 7–26–22; 8:45 am]

BILLING CODE 6355–01–P

[1] See Table 4: Employer Costs for Employee Compensation News Release—2021 Q03 Results (*bls.gov*).

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Sunshine Act Meetings; Agency Holding the Meetings: Mississippi River Commission.

TIME AND DATE: 9:00 a.m., August 22, 2022.

PLACE: On board MISSISSIPPI V at Riverside Park, Tiptonville, Tennessee.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the St. Louis and Memphis Districts; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., August 23, 2022.

PLACE: On board MISSISSIPPI V at Beale Street Landing, Memphis, Tennessee.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 2:00 p.m., August 24, 2022.

PLACE: On board MISSISSIPPI V at City Front, Vicksburg, Mississippi.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the

Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., August 26, 2022.

PLACE: On board MISSISSIPPI V at Port Commission Dock, Morgan City, Louisiana.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles A. Camillo, telephone 601–634–7023.

Diana M. Holland,

Major General, USA, President, Mississippi River Commission.

[FR Doc. 2022–16167 Filed 7–25–22; 4:15 pm]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer Grants); Corrections

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice; corrections.

SUMMARY: On July 6, 2022, the Department of Education (Department) published in the **Federal Register** a notice inviting applications (NIA) for the fiscal year (FY) 2022 Developer Grants competition, Assistance Listing Numbers (ALNs) 84.282B and 84.282E. This notice corrects two errors in that NIA. All other information in the NIA remains the same. To be eligible to apply for a Developer Grant, a charter school may not be located in a State in which a State entity currently has an approved CSP State Entity grant (ALN 84.282A) under section 4303 of the Elementary and Secondary Act of 1965 (ESEA). Footnote 3 of the NIA provides a list of States with active SE grants. In this list Mississippi should not have been included and South Carolina should have been included.

DATES: These corrections are applicable July 27, 2022.

FOR FURTHER INFORMATION CONTACT: Porscheoy Brice, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E209, Washington, DC 20202–5970. Telephone: (202) 987–1769. Email: *DeveloperCompetition2022@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: We are correcting the July 6, 2022, NIA to remove Mississippi from and add South Carolina to the list of States from which we will not consider applications under either ALNs 84.282B or 84.282E because these States have a State entity that currently has an approved CSP State Entity grant application under section 4303 of the ESEA and that is actively running subgrant competitions.

Corrections

In FR Doc. No. 2022–14448, in the **Federal Register** published on July 6, 2022 (87 FR 40218), we make the following corrections:

On Page 40225, in Footnote 3, in the second column, under the heading *III. Eligibility Information,* revise the footnote to read as follows:

''States in which a State entity currently has an approved CSP State Entity grant application under section 4303 of the ESEA that is actively running subgrant competitions are Alabama, Arizona, Arkansas, California, Colorado, Delaware, District of Columbia, Florida, Idaho, Indiana, Maryland, Michigan, Minnesota, Nevada, New Hampshire, New Mexico, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Washington, and Wisconsin. We will not consider applications from applicants in these States under either Assistance Listing Numbers 84.282B or 84.282E.''

Program Authority: Title IV, part C of the ESEA, as amended.

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

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

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

Ruth E. Ryder,

Deputy Assistant Secretary for Policy and Programs, Office of Elementary and Secondary Education.

[FR Doc. 2022–16026 Filed 7–26–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket Nos. 11–59–LNG and 16–110–LNG]

Lake Charles Exports, LLC; Application To Amend Existing Long-Term Authorizations To Export Liquefied Natural Gas to Non-Free Trade Agreement Countries

AGENCY: Office of Fossil Energy and Carbon Management, Department of Energy.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy and Carbon Management (FECM) (formerly the Office of Fossil Energy) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed on June 21, 2022, by Lake Charles Exports, LLC (LCE). LCE requests to amend its existing authorizations to export domestically produced liquefied natural

gas (LNG) to non-free trade agreement countries set forth in DOE/FE Order Nos. 3324–A and 4011 (both as amended). Specifically, LCE seeks to amend the commencement of operations deadline in each order. LCE filed the Application under the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed electronically as detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, August 11, 2022.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, DOE has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid-19 pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Office of Resource Sustainability staff at (202) 586–4749 or (202) 586–7893 to discuss the need for alternative arrangements. Once the Covid-19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

FOR FURTHER INFORMATION CONTACT:

Jennifer Wade or Peri Ulrey, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–4749 or (202) 586–7893, *jennifer.wade@hq.doe.gov* or *peri.ulrey@hq.doe.gov.*

Kavita Vaidyanathan, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Energy Delivery and Resilience, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–0669, *kavita.vaidyanathan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: LCE is authorized to export domestically produced LNG by vessel from the Lake Charles Terminal, located in Lake Charles, Louisiana, to any country with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries), pursuant to NGA Section 3(a),[1] under the following orders and their amendments:

- DOE/FE Order No. 3324–A (Docket No. 11–59–LNG), in a volume equivalent to 730 billion cubic per year (Bcf/yr) of natural gas; [2] and
- DOE/FE Order No. 4011 (Docket No. 16–110–LNG), in a volume equivalent to 121 Bcf/yr of natural gas.[3]

In the Application,[4] LCE seeks to amend the existing commencement of operations deadline in both orders as follows:

- In DOE/FE Order No. 3324–A, to extend the commencement deadline from December 16, 2025 to December 16, 2028; and
- In DOE/FE Order No. 4011 to extend the commencement deadline from December 16, 2025 to December 16, 2028.

In support of this Application, LCE states that, on May 6, 2022, the Federal Energy Regulatory Commission (FERC) issued an order granting LCE's request for an extension of time until December 16, 2028, to construct the Lake Charles Terminal liquefaction facilities and make it available for service (FERC 2022 Extension Order).[5] LCE requests that DOE amend Order Nos. 3324–A and 4011 so that LCE must commence export operations using the planned liquefaction facilities no later than December 16, 2028—to align with the FERC 2022 Extension Order. LCE also identifies the actions it has taken to date to proceed with the construction and operation of the Lake Charles Terminal liquefaction facilities. Additional details can be found in the Application, posted on the DOE website at: *www.energy.gov/sites/default/files/2022-06/LCE%20Amendment%20Application%20Re%20Commencement%20Date.pdf.*

DOE Evaluation

In reviewing LCE's Application, DOE will consider any issues required by law or policy under NGA section 3(a). To the extent appropriate, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study),[6] DOE's response to public comments received on that Study,[7] and the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014); [8]
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States,* 79 FR 32260 (June 4, 2014); [9] and
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update,* 84 FR 49278 (Sept. 19, 2019), and DOE's response to public comments received on that study.[10]

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[1] 15 U.S.C. 717b(a).

[2] *Lake Charles Exports, LLC,* DOE/FE Order No. 3324–A, Docket No. 11–59–LNG, Final Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Lake Charles Terminal in Calcasieu Parish, Louisiana to Non-Free Trade Agreement Nations (July 29, 2016), *amended by* DOE/FE Order No. 3324–B (Oct. 6, 2020) (amending the commencement of operations deadline), *https://www.energy.gov/sites/prod/files/2016/07/f33/ord3324a.pdf.*

[3] *Lake Charles Exports, LLC,* DOE/FE Order No. 4011, Docket No. 16–110–LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Lake Charles Terminal in Lake Charles, Louisiana, to Free Trade Agreement and Non-Free Trade Agreement Nations (June 29, 2017), *amended by* DOE/FE Order No. 4011–A (Oct. 6, 2020) (amending the commencement of operations deadline), *https://www.energy.gov/sites/prod/files/2017/06/f35/ord4011.pdf.* The portion of this order authorizing LCE to export LNG to FTA countries is not subject to this Notice. *See* 15 U.S.C. 717b(c).

[4] Lake Charles Exports, LLC, Application to Amend Existing Long-Term Authorizations to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries, Docket Nos. 11–59–LNG and 16–110–LNG (June 21, 2022), *https://www.energy.gov/sites/default/files/2022-06/LCE%20Amendment%20Application%20Re%20Commencement%20Date.pdf.* The Application also applies to LCE's existing FTA orders in Docket Nos. 11–59–LNG and 16–110–LNG, but DOE will address the FTA portions of the Application separately pursuant to NGA section 3(c), 15 U.S.C. 717b(c).

[5] *Lake Charles LNG Company, LLC, et al.,* 179 FERC ¶ 61,086 (2022), *https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220506-3073.*

[6] *See* NERA Economic Consulting, Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (June 7, 2018), *https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf.*

[7] U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018), *https://www.govinfo.gov/content/pkg/FR-2018-12-28/pdf/2018-28238.pdf.*

[8] The Addendum and related documents are available at: *https://www.energy.gov/fecm/addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

[9] The 2014 Life Cycle Greenhouse Gas Report is available at: *https://www.energy.gov/fecm/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.*

[10] U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update—Response to Comments, 85 FR 72 (Jan. 2, 2020). The 2019 Update and related documents are available at: *https://fossil.energy.gov/app/docketindex/docket/index/21.*

Parties that may oppose the Application should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable, addressing the Application. Interested parties will be provided 15 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention. The public previously was given an opportunity to intervene in, protest, and comment on LCE's long-term non-FTA applications. Therefore, DOE will not consider comments or protests that do not bear directly on the Application.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590, including the service requirements.

As noted, DOE is only accepting electronic submissions at this time. Please email the filing to *fergas.hq.doe.gov.* All filings must include a reference to ''Docket Nos. 11–59–LNG and 16–110–LNG'' or ''Lake Charles Exports, LLC Commencement Amendment'' in the title line.

PLEASE NOTE: Please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

The Application and any filed protests, motions to intervene, notices of interventions, and comments will also be available electronically by going to the following DOE Web address: *www.energy.gov/fecm/regulation.*

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

Signed in Washington, DC, on July 21, 2022.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability.

[FR Doc. 2022–16084 Filed 7–26–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket Nos. 13–04–LNG and 16–109–LNG]

Lake Charles LNG Export Company, LLC; Application To Amend Existing Long-Term Authorizations To Export Liquefied Natural Gas to Non-Free Trade Agreement Countries

AGENCY: Office of Fossil Energy and Carbon Management, Department of Energy.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy and Carbon Management (FECM) (formerly the Office of Fossil Energy) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed on June 21, 2022, by Lake Charles LNG Export Company, LLC (Lake Charles LNG Export). Lake Charles LNG Export requests to amend its existing authorizations to export domestically produced liquefied natural gas (LNG) to non-free trade agreement countries set forth in DOE/FE Order Nos. 3868 and 4010 (both as amended). Specifically, Lake Charles LNG Export seeks to amend the commencement of operations deadline in each order. Lake Charles LNG Export filed the Application under the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed electronically as detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, August 11, 2022.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, DOE has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid–19 pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Office of Resource Sustainability staff at (202) 586–4749 or (202) 586–7893 to discuss the need for alternative arrangements. Once the Covid–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

FOR FURTHER INFORMATION CONTACT:

Jennifer Wade or Peri Ulrey, U.S. Department of Energy (FE–34) Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–4749 or (202) 586–7893, *jennifer.wade@hq.doe.gov.* or *peri.ulrey@hq.doe.gov.*

Kavita Vaidyanathan, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Energy Delivery and Resilience, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–0669, *kavita.vaidyanathan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Lake Charles LNG Export is authorized to export domestically produced LNG by vessel from the Lake Charles Terminal, located in Lake Charles, Louisiana, to any country with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries),

pursuant to NGA section 3(a),[1] under the following orders and their amendments:

- DOE/FE Order No. 3868 (Docket No. 13–04–LNG), in a volume equivalent to 730 billion cubic per year (Bcf/yr) of natural gas.[2]
- In DOE/FE Order No. 4010 (Docket No. 16–109–LNG), in a volume equivalent to 121 Bcf/yr of natural gas.[3]

In the Application,[4] Lake Charles LNG Export seeks to amend the existing commencement of operations deadline in both orders as follows:

- In DOE/FE Order No. 3868, to extend the commencement deadline from December 16, 2025 to December 16, 2028; and
- In DOE/FE Order No. 4010 to extend the commencement deadline from December 16, 2025 to December 16, 2028.

In support of this Application, Lake Charles LNG Export states that, on May 6, 2022, the Federal Energy Regulatory Commission (FERC) issued an order granting Lake Charles LNG Export's request for an extension of time until December 16, 2028, to construct the Lake Charles Terminal liquefaction facilities and make it available for service (FERC 2022 Extension Order).[5] Lake Charles LNG Export requests that DOE amend Order Nos. 3868 and 4010 so that Lake Charles LNG Export must commence export operations using the planned liquefaction facilities no later than December 16, 2028—to align with the FERC 2022 Extension Order. Lake Charles LNG Export also identifies the actions it has taken to date to proceed with the construction and operation of the Lake Charles Terminal liquefaction facilities. Additional details can be found in the Application, posted on the DOE website at: *www.energy.gov/sites/default/files/2022-06/LCLNG%20Amendment%20Application%20Re%20Commencement%20Date.pdf.*

DOE Evaluation

In reviewing Lake Charles LNG Export's Application, DOE will consider any issues required by law or policy under NGA section 3(a). To the extent appropriate, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study),[6] DOE's response to public comments received on that Study,[7] and the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014); [8]
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States,* 79 FR 32260 (June 4, 2014); [9] and
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update,* 84 FR 49278 (Sept. 19, 2019), and DOE's response to public comments received on that study.[10]

Parties that may oppose the Application should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable, addressing the Application. Interested parties will be provided 15 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention. The public previously was given an opportunity to intervene in, protest, and comment on Lake Charles LNG Export's long-term non-FTA applications. Therefore, DOE will not consider comments or protests that do not bear directly on the Application.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590, including the service requirements.

As noted, DOE is only accepting electronic submissions at this time. Please email the filing to *fergas.hq.doe.gov.* All filings must include a reference to ''Docket Nos. 13–04–LNG and 16–109–LNG'' or ''Lake Charles LNG Export Company, LLC Commencement Amendment'' in the title line.

Please Note: Please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a

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[1] 15 U.S.C. 717b(a).

[2] *Lake Charles LNG Export Co., LLC,* DOE/FE Order No. 3868, Docket No. 13–04–LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Lake Charles Terminal in Calcasieu Parish, Louisiana, to Non-Free Trade Agreement Nations (July 29, 2016), *amended by* Order No. 3868–A (Oct. 6, 2020) (amending the commencement of operations deadline), *https://www.energy.gov/sites/prod/files/2016/07/f33/ord3868.pdf.*

[3] *Lake Charles LNG Export Co., LLC,* DOE/FE Order No. 4010, Docket No. 16–109–LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Lake Charles Terminal in Lake Charles, Louisiana, to Free Trade and Non-Free Trade Agreement Nations (June 29, 2017), *amended by* Order No. 4010–A (Oct. 6, 2020) (amending the commencement of operations deadline), *https://www.energy.gov/sites/prod/files/2017/06/f35/ord4010.pdf.* The portion of this order authorizing Lake Charles LNG Export to export LNG to FTA countries is not subject to this Notice. *See* 15 U.S.C. 717b(c).

[4] Lake Charles LNG Export Co., LLC, Application to Amend Existing Long-Term Authorizations to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries, Docket Nos. 13–04–LNG and 16–109–LNG (June 21, 2022), *https://www.energy.gov/sites/default/files/2022-06/LCLNG%20Amendment%20Application%20Re%20Commencement%20Date.pdf.* The Application also applies to Lake Charles LNG Export's existing FTA orders in Docket Nos. 13–04–LNG and 16–109–LNG, but DOE will address the FTA portions of the Application separately pursuant to NGA section 3(c), 15 U.S.C. 717b(c).

[5] *Lake Charles LNG Company, LLC, et al.,* 179 FERC ¶ 61,086 (2022), *https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220506-3073.*

[6] *See* NERA Economic Consulting, Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (June 7, 2018), *https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf.*

[7] U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018), *https://www.govinfo.gov/content/pkg/FR-2018-12-28/pdf/2018-28238.pdf.*

[8] The Addendum and related documents are available at: *https://www.energy.gov/fecm/addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

[9] The 2014 Life Cycle Greenhouse Gas Report is available at: *https://www.energy.gov/fecm/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.*

[10] U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update—Response to Comments, 85 FR 72 (Jan. 2, 2020). The 2019 Update and related documents are available at: *https://fossil.energy.gov/app/docketindex/docket/index/21.*

digital copy on disk of the entire submission.

The Application and any filed protests, motions to intervene, notices of interventions, and comments will also be available electronically by going to the following DOE Web address: *www.energy.gov/fecm/regulation.*

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

Signed in Washington, DC, on July 21, 2022.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability.

[FR Doc. 2022–16082 Filed 7–26–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Proposed Subsequent Arrangement

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Proposed subsequent arrangement.

SUMMARY: This document is being issued under the authority of the Atomic Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States Concerning Peaceful Uses of Nuclear Energy.

DATES: This subsequent arrangement will take effect no sooner than August 11, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Andrea Ferkile, Office of Nonproliferation and Arms Control, National Nuclear Security Administration, Department of Energy. Telephone: 202–586–8868 or email: *andrea.ferkile@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION: This proposed subsequent arrangement concerns the retransfer of 31,800.11 kilograms depleted uranium hexafluoride and 3,000,272.54 grams low enriched uranium hexafluoride containing 97,514.76 grams U–235, both U.S.-obligated, from the Institute of Nuclear Energy Research in Taoyuan City, Taiwan, to Urenco UK in Capenhurst, Chester, United Kingdom, for stabilization and storage. Upon transfer to the United Kingdom, the material will become subject to the Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for Cooperation in Peaceful Uses of Nuclear Energy.

Pursuant to the authority in section 131 a. of the Atomic Energy Act of 1954, as delegated, I have determined that this proposed subsequent arrangement concerning the retransfer of U.S.-obligated nuclear material will not be inimical to the common defense and security of the United States of America.

Signing Authority

This document of the Department of Energy was signed on July 21, 2022, by Corey Hinderstein, Deputy Administrator for Defense Nuclear Nonproliferation, 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 22, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–16080 Filed 7–26–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–490–000]

Delfin LNG LLC; Notice of Request for Extension of Time

Take notice that on July 15, 2022, Delfin LNG LLC (Delfin) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time (2022 Extension of Time Request), until September 28, 2023, to construct and place into service the facilities that were authorized in the original certificate authorization issued on September 28, 2017 (Certificate Order).[1] The Certificate Order authorized certain ''onshore facilities'' that would be used exclusively to transport natural gas to Delfin's deepwater port ''offshore facilities'' (collectively, the Project) in federal waters offshore Louisiana. The onshore facilities would be used to meet the requirements of the customers of the offshore facilities. The Commission subsequently has granted three, successive one-year extensions of this in-service timing condition, with the result that the facilities currently are required to be made available for service by September 28, 2022.[2]

In its 2022 Extension of Time Request, Delfin states that it has made significant progress in developing the Project. Delfin asserts that the market for LNG is strong with the current geopolitical importance of the Ukraine invasion and the initiative of the European Union to increase deliveries of U.S LNG to Europe. Additionally, Delfin states that the Project remains commercially viable with a binding LNG sale and purchase agreement with Vitol Spa for 0.5 million metric tonnes per annum (mtpa) of LNG delivered free on-board at the Delfin LNG deepwater port, for 15 years. Moreover, Delphin explains that it has continued to work to develop the Project by completing the Front End Engineering and Design for the construction of the Floating LNG vessels (FLNGV). Delfin states the project consists of 4 separates floating FLNGV, and only requires 2.0 to 2.5 mtpa of LNG for the long-term off-take contracts to support a final investment (FID) and begin construction of the first FLNGV. Moreover, Delfin affirms that FID for the first FLNGV is on schedule for the end of the year. Accordingly, Delfin requests an extension of time until September 28, 2023 to complete construction of the onshore facilities and place them into service.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on Delfin's request for an extension of time may do so. No reply

[1] *Delfin LNG LLC,* 160 FERC ¶ 61,130 (2017).

[2] Delfin LNG LLC, Docket No. CP15–490–000 (July 8, 2019) (delegated order) (July 2019 Extension Order)., Delfin LNG LLC, Docket No. CP15–490–000 (July 15, 2020) (delegated order) (July 2020 Extension Order)., Delfin LNG LLC, Docket No. CP15–490–000 (June 30, 2021) (delegated order) (July 21 Extension Order).

comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,[3] the Commission will aim to issue an order acting on the request within 45 days.[4] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[5] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[6] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[7] The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to 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 ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and three copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on, August 5, 2022.

Dated: July 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–16120 Filed 7–26–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–9–000]

New England Winter Gas-Electric Forum; Supplemental Notice of New England Winter Gas-Electric Forum

As announced in the Notice of Forum issued in the above-referenced proceeding on May 19, 2022, the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led forum on Thursday, September 8, 2022, from approximately 9 a.m. to 5 p.m. Eastern Time, to discuss the electricity and natural gas challenges facing the New England Region. A preliminary agenda for this forum is attached. The Commission will issue a further supplemental notice with a full agenda and the confirmed panelists prior to the forum. The forum will be open to the public and held in the Emerald I & II Ballroom at the DoubleTree by Hilton Burlington Vermont, 870 Williston Rd, South Burlington, VT, 05403.

The purpose of the forum is to bring together stakeholders in New England to discuss the challenges faced historically during New England winters and discuss the stakeholders' differing expectations of challenges for future winters. The objectives of the forum are to achieve greater consensus or agreement among stakeholders in defining the electric and natural gas system challenges in New England and identify what, if any, steps are needed to better understand those challenges before identifying solutions.

While the forum is not for the purpose of discussing any specific matters before the Commission, some forum discussions may involve issues raised in proceedings that are currently pending before the Commission. These proceedings include, but are not limited to:

Constellation Mystic Power LLC	Docket Nos. ER18–1639–000, ER18–1639–014, ER18–1639–015, ER18–1639–017, ER22–1192–000.
ISO New England Inc	Docket Nos. ER19–1428–000, ER19–1428–001, ER19–1428–002, ER19–1428–003, ER19–1428–004.
RENEW Northeast and American Clean Power Association vs. ISO New England Inc.	Docket No. ER22–42–000.

Only Commissioners and panelists will participate in the panel discussions. The forum will be open to the public for listening and observing, and written comments may be submitted in Docket No. AD22–9–000.

Registration for in-person attendance will be required, and there is no fee for attendance. A link to attendee registration will be available on the New England Winter Gas-Electric Forum event page. Due to space constraints, seating for this event will be limited and registrants that get a confirmed space will be contacted via email. Only confirmed registrants can be admitted to the forum given the maximum occupancy limit at the venue (as

[3] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

[4] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

[5] *Id.* at P 40.

[6] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[7] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

required by fire and building safety code). Therefore, the Commission encourages members of the public who wish to attend this event in person to register at their earliest convenience. Online registration will be open, as long as attendance capacity is available, until the day before the forum (September 7). Once registration has reached capacity, registration will be closed. However, those interested in attending after capacity has been reached can join a waiting list (using the same registration link) and be notified if space becomes available. Those who are unable to attend in person may watch the free webcast.

The webcast will allow persons to listen and observe the forum remotely but not participate. Information on this forum, including a link to the webcast, will be posted prior to the event on this forum's event page on the Commission's website. A recording of the webcast will be made available after the forum in the same location on the Calendar of Events. The forum will be transcribed. Transcripts of the forum will be available for a fee from Ace-Federal Reporters, Inc. (202–347–3700).

Individuals interested in participating as panelists should submit a self-nomination email by 5 p.m. Eastern time on August 3, 2022, to *Panelist_NewEnglandForum@ferc.gov.* The self-nominations should have ''Panelist Self-Nomination'' in the subject line and include the panelist's name, photograph, contact information, organizational affiliation, one-paragraph biography, and what panels the self-nominated panelist proposes to speak on.

Additionally, please note that the Commission will be implementing health and safety restrictions, as appropriate, associated with the Centers for Disease Control and Prevention (CDC) COVID Community Level mitigations. This may include requiring all participants to wear cloth face covers or masks as well as further limiting venue occupancy if Chittenden County is designated as having a high-community level in data expected to be released on the evening of Thursday, September 1. The CDC Community Level tracker may be found at the CDC COVID Data Tracker site.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this forum, please contact *NewEnglandForum@ferc.gov* for technical or logistical questions.

Dated: July 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–16113 Filed 7–26–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2188–274]

NorthWestern Corporation; Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-capacity Amendment of License.

b. *Project No:* 2188–274.

c. *Date Filed:* July 14, 2022.[1]

d. *Applicant:* NorthWestern Corporation (licensee).

e. *Name of Project:* Missouri-Madison Hydroelectric Project.

f. *Location:* The project consists of nine hydroelectric developments located on the Madison and Missouri Rivers in Gallatin, Madison, Lewis and Clark, and Cascade counties, in southwestern Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mary Gail Sullivan, Director, Environmental and Lands, Northwestern Corporation, 11 East Park Street Butte, Montana 59701, (406) 497–3382, *marygail.sullivan@northwestern.com* and John Tabaracci, Senior Corporate Counsel, Northwestern Corporation, 208 North Montana Avenue, Suite 205, Helena, Montana 59601 (406) 443–8983, *john.tabaracci@northwestern.com.*

i. *FERC Contact:* Jeremy Jessup, (202) 502–6779, *Jeremy.Jessup@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* August 22, 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–2188–274. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee proposes to replace the Black Eagle Development's Unit 3 turbine and refurbish the generators for Units 1 and 3. The proposed upgrade will result in a 2.1 megawatt (MW) increase in the authorized installed capacity of the development, to 23.90 MW, and will result in an increase to the hydraulic capacity of the development of 11%, from 5,691 cubic feet per second (cfs) to 6,342 cfs. The licensee also proposes to replace the Cochrane Development's Unit 2 turbine and rewind its generator. The proposed upgrade will result in a 11.0 MW decrease in the authorized installed capacity of the development, to 48.90 MW, and will decrease the hydraulic capacity of the development 20%, from 10,800 cfs to 8,640 cfs. The proposed actions will result in the total authorized installed capacity for the project decreasing from 327.37 MW to 318.47 MW. The licensee states that the upgrades will have no measurable effect on the operation of the project and only a minor effect on hydraulic flows.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link.

[1] The July 14, 2022 filing supersedes a July 6, 2022 filing.

Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. *Location of the Orders Issuing New License:* This order may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *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.

p. *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 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–16117 Filed 7–26–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15038–001]

Let It Go, LLC; Notice of Application Accepted for Filing, Intent To Waive Scoping, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption from Licensing.

b. *Project No.:* 15038–001.

c. *Date filed:* December 9, 2021.

d. *Applicant:* Let It Go, LLC (Let It Go).

e. *Name of Project:* Jefferson Mill Hydroelectric Project (Jefferson Mill Project).

f. *Location:* On the Hardware River near the Town of Scottsville, Albemarle County, Virginia. The project would not occupy Federal land.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708, *amended by* the Hydropower Regulatory Efficiency Act of 2013, Public Law 113–23, 127 Stat. 493 (2013).

h. *Applicant Contacts:* Aaron Van Duyne III, Let It Go, LLC c/o Van Duyne, Bruno & Co., P.A.; 18 Hook Mountain Road, Suite 202, P.O. Box 896, Pine Brook, NJ 07058; *avanduyne@vb-cpa.com;* Kevin O'Brien, 809 Bolling Ave, Unit C, Charlottesville, VA 22902; (703) 966–2438 or *kaob@fpcinc.biz;* and/or Jessica Penrod (lead contact for project questions), Natel Energy, 2401 Monarch St, Alameda, CA 94501; 415–845–1933 or *Jeffersonmill@natelenergy.com.*

i. *FERC Contact:* Andy Bernick, (202) 502–8660, or *andrew.bernick@ferc.gov.*

j. *Deadline for filing comments, motions to intervene and protests, terms and conditions, recommendations, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, terms and conditions, recommendations, and prescriptions using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include 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 docket number 15038–001.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *The proposed project would consist of:* (1) an existing 140-foot-long, 9-foot-high masonry dam that impounds a 1.46-acre reservoir with a gross volume of 5.3 acre-feet at the normal pool elevation of 320.0 feet North American Vertical Datum of 1988 (NAVD88); (2) a new 12.5-foot-wide, 4-foot-high intake rack with 0.75-inch spacing to prevent river debris from entering the intake; (3) a new 14-foot-long, 12-foot-wide, and 10-foot-high reinforced concrete intake structure, mostly constructed below-grade and upstream of the dam on the west side of the river; (4) a new 70-foot-long, 3-foot-diameter penstock; (5) a new eel ramp for the upstream passage of American eel and sea lamprey; (6) an existing 3-foot-wide and 0.9-foot-high low-flow notch and 4.6-foot-deep

plunge pool for downstream fish passage; (7) an existing 33-foot-wide, 8-foot-long, 14-foot-high powerhouse with one new 20-kilowatt (kW) turbine-generator unit; (8) two new 100-foot-long underground utility trenches (containing conduits for utility power, generator power, and communications) between the powerhouse and control equipment shed; (9) a new draft tube that connects the exit of the turbine to the tailrace; (10) a transmission line connecting the project to the distribution system owned by the Appalachian Power Company; and (11) appurtenant facilities. The project is estimated to generate an average of 111,000 kW-hours annually. The applicant proposes to operate the project in a run-of-river mode.

m. On February 16, 2022, Let It Go filed a request to waive scoping to expedite the exemption process, and received support for the waiver from the U.S. Fish and Wildlife Service, Virginia Marine Resources Commission, Virginia Department of Historic Resources, and the U.S. Army Corps of Engineers. Due to the small size and location of this project, the applicant's close coordination with federal and state agencies during preparation of the application, and studies completed during pre-filing consultation, we intend to waive scoping. Based on a review of the application and resource agency consultation letters including comments filed to date, Commission staff does not anticipate that any new issues would be identified through additional scoping. Based on the issues identified during the pre-filing period, staff's National Environmental Policy Act (NEPA) document will consider the potential effects of project construction and operation on geology and soils, aquatic, terrestrial, threatened and endangered species, recreation, and cultural and historic resources.

n. A copy of the application can be viewed on the Commission's website at *https://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

Register online at *https://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

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, and .214. 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.

All filings must: (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

p. *Updated procedural schedule and final amendments:* The application will be processed according to the following procedural schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Deadline for filing interventions, protests, comments, recommendations, terms and conditions, and fishway prescriptions.	September 2022.
Deadline for filing reply comments	November 2022.

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice of ready for environmental analysis.

Dated: July 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–16114 Filed 7–26–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–92–000.

Applicants: Top Hat Wind Energy LLC, Appalachian Power Company.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Top Hat Wind Energy LLC, et al.

Filed Date: 7/20/22.

Accession Number: 20220720–5203.

Comment Date: 5 p.m. ET 8/10/22

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–178–000.

Applicants: Java Solar, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Java Solar, LLC.

Filed Date: 7/20/22.

Accession Number: 20220720–5169.

Comment Date: 5 p.m. ET 8/10/22.

Docket Numbers: EG22–179–000.

Applicants: Limestone Wind Project, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Limestone Wind Project, LLC.
Filed Date: 7/20/22.
Accession Number: 20220720–5171.
Comment Date: 5 p.m. ET 8/10/22

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2374–016; ER17–2059–011.
Applicants: Puget Sound Energy, Inc., Puget Sound Energy, Inc.
Description: Errata to June 30, 2022 Triennial Market Power Analysis for the Northwest Region of Puget Sound Energy, Inc. under ER10–2374, et al.
Filed Date: 7/18/22.
Accession Number: 20220718–5223.
Comment Date: 5 p.m. ET 8/8/22.
Docket Numbers: ER21–1046–003.
Applicants: Sugar Creek Wind One LLC.
Description: Compliance filing: Sugar Creek Wind One, LLC-Compliance Filing (ER21–1046-) to be effective 5/1/2021.
Filed Date: 7/21/22.
Accession Number: 20220721–5098.
Comment Date: 5 p.m. ET 8/11/22.
Docket Numbers: ER22–1566–003.
Applicants: Guernsey Power Station LLC.
Description: Tariff Amendment: Response to Deficiency Notice to be effective 5/16/2022.
Filed Date: 7/21/22.
Accession Number: 20220721–5118.
Comment Date: 5 p.m. ET 8/11/22.
Docket Numbers: ER22–1702–001.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: Tariff Amendment: Niagara Mohawk Power Corporation submits tariff filing per 35.17(b): NMPC response to deficiency letter on April 28, 2022 filing of five SGIAs to be effective 4/1/2022.
Filed Date: 7/21/22.
Accession Number: 20220721–5030.
Comment Date: 5 p.m. ET 8/11/22.
Docket Numbers: ER22–1863–001.
Applicants: Arizona Public Service Company.
Description: Compliance filing: Order No. 881 Compliance Filing—Amendment 1 to be effective 5/13/2022.
Filed Date: 7/21/22.
Accession Number: 20220721–5083.
Comment Date: 5 p.m. ET 8/11/22.
Docket Numbers: ER22–2011–001; ER22–2007–000; ER22–2009–001.
Applicants: Duke Energy Progress, LLC, Duke Energy Florida, LLC, Duke Energy Progress, LLC, Duke Energy Carolinas, LLC, Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC, et. al. submit response to Deficiency Letter under ER22–2011, et. al.
Filed Date: 7/8/22.
Accession Number: 20220708–5173.
Comment Date: 5 p.m. ET 7/29/22.
Docket Numbers: ER22–2030–001.
Applicants: Sonoran West Solar Holdings, LLC.
Description: Tariff Amendment: Amendment to 1 to be effective 6/4/2022.
Filed Date: 7/21/22.
Accession Number: 20220721–5053.
Comment Date: 5 p.m. ET 8/11/22.
Docket Numbers: ER22–2031–002.
Applicants: Sonoran West Solar Holdings 2, LLC.
Description: Tariff Amendment: Amendment to 1 to be effective 6/4/2022.
Filed Date: 7/21/22.
Accession Number: 20220721–5054.
Comment Date: 5 p.m. ET 8/11/22.
Docket Numbers: ER22–2251–000.
Applicants: Tidal Energy Marketing (U.S.) L.L.C.
Description: Supplement to June 30, 2022 Tidal Energy Marketing (U.S.) L.L.C. tariff filing.
Filed Date: 7/19/22.
Accession Number: 20220719–5241.
Comment Date: 5 p.m. ET 8/2/22.
Docket Numbers: ER22–2380–000.
Applicants: Virginia Electric and Power Company d/b/a Dominion Energy Virginia.
Description: Dominion Energy Virginia Submits One-Time Limited Waiver Request of It's Formula Rate Protocols with Expedited Consideration.
Filed Date: 7/12/22.
Accession Number: 20220712–5232.
Comment Date: 5 p.m. ET 8/2/22.
Docket Numbers: ER22–2446–000.
Applicants: Public Service Company of New Mexico.
Description: § 205(d) Rate Filing: Modifications to NITSA/NOA Between PNM and TSGT to be effective 7/1/2022.
Filed Date: 7/20/22.
Accession Number: 20220720–5170.
Comment Date: 5 p.m. ET 8/10/22.
Docket Numbers: ER22–2447–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of WMPA, Service Agreement No. 6321; Queue No. AC2–050 to be effective 8/26/2022.
Filed Date: 7/21/22.
Accession Number: 20220721–5001.
Comment Date: 5 p.m. ET 8/11/22.
Docket Numbers: ER22–2448–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 14 to be effective 8/22/2022.
Filed Date: 7/21/22.
Accession Number: 20220721–5031.
Comment Date: 5 p.m. ET 8/11/22.
Docket Numbers: ER22–2449–000.
Applicants: Southwest Power Pool, Inc.
Description: Request for Reliability Penalty Cost Recovery under OATT Attachment AP of Southwest Power Pool, Inc.
Filed Date: 7/20/22.
Accession Number: 20220720–5201.
Comment Date: 5 p.m. ET 8/10/22.
Docket Numbers: ER22–2450–000.
Applicants: Meadow Lake Solar Park LLC.
Description: Baseline eTariff Filing: Certificate of Concurrence to Shared Facilities Agreement to be effective 7/22/2022.
Filed Date: 7/21/22.
Accession Number: 20220721–5044.
Comment Date: 5 p.m. ET 8/11/22.
Docket Numbers: ER22–2451–000.
Applicants: Entergy Arkansas, LLC.
Description: Tariff Amendment: EAL Placeholder Tariff Record Cancellation to be effective 7/22/2022.
Filed Date: 7/21/22.
Accession Number: 20220721–5072.
Comment Date: 5 p.m. ET 8/11/22.
Docket Numbers: ER22–2452–000.
Applicants: Kentucky Utilities Company.
Description: § 205(d) Rate Filing: APCO Borderline Agreement Amended Appendix B to be effective 8/1/2022.
Filed Date: 7/21/22.
Accession Number: 20220721–5080.
Comment Date: 5 p.m. ET 8/11/22.
Docket Numbers: ER22–2453–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Designated Entity Agreement, SA No. 6529 between PJM and PPL EU to be effective 6/24/2022.
Filed Date: 7/21/22.
Accession Number: 20220721–5084.
Comment Date: 5 p.m. ET 8/11/22.
Docket Numbers: ER22–2454–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Garcitas Creek Solar Generation Interconnection Agreement to be effective 6/30/2022.
Filed Date: 7/21/22.
Accession Number: 20220721–5104.
Comment Date: 5 p.m. ET 8/11/22.
Docket Numbers: ER22–2455–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX–LCRA TSC (Asphalt Mines) 1st

A&R Facility Develop.m.ent Agreement to be effective 6/29/2022.

Filed Date: 7/21/22.

Accession Number: 20220721–5107.

Comment Date: 5 p.m. ET 8/11/22.

Docket Numbers: ER22–2456–000.

Applicants: Florida Power & Light Company.

Description: § 205(d) Rate Filing: FPL SA No. 400 Santa Rosa Generator Imbalance Service Agreement to be effective 12/31/9998.

Filed Date: 7/21/22.

Accession Number: 20220721–5111.

Comment Date: 5 p.m. ET 8/11/22.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH22–18–000.

Applicants: Consumers Energy Company.

Description: CMS Energy Corporation submits FERC 65–B Notice of Exemption Notification.

Filed Date: 7/20/22.

Accession Number: 20220720–5200.

Comment Date: 5 p.m. ET 8/10/22.

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 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–16121 Filed 7–26–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–2419–000]

Lockhart Solar PV, LLCI Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Lockhart Solar PV, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 10, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *https://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*https://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: July 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–16119 Filed 7–26–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4334–017]

EONY Generation Limited; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following license application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–4334–017.

c. *Date filed:* January 28, 2021.

d. *Applicant:* EONY Generation Limited (EONY).

e. *Name of Project:* Philadelphia Hydroelectric Project.

f. *Location:* On the Indian River, in the Village of Philadelphia in Jefferson County, New York. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Franz Kropp, Director, Generation, EONY, 7659 Lyonsdale Road, Lyons Falls, NY 13368; (613) 225–0418, ext. 7498. Murray Hall, Manager, Generation, EONY, 7659 Lyonsdale Road, Lyons Falls, NY 13368; (613) 382–7312.

i. *FERC Contact:* Emily Carter at (202) 502–6512, or *Emily.Carter@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and

conditions, and prescriptions using the Commission's eFiling system at *https://ferconline.ferc.gov/FERC.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/Quick.aspx.* 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. All filings must clearly identify the project name and docket number on the first page: Philadelphia Hydroelectric Project (P–4334–017).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis at this time.

l. *Project Description:* The existing Philadelphia Hydroelectric Project consists of: (1) a 65-acre reservoir at a normal maximum water surface elevation of 475.4 feet; [1] (2) two concrete dams joined by an island and designated as the east diversion dam, which is 60 feet long and 2 to 3 feet high with a crest elevation of 474.4 feet, and topped with 1.2-foot-high flashboards, and the west diversion dam, which has two sections totaling approximately 30 feet long and 10.4 feet high with a crest elevation of 475.4 feet; (3) a 45-foot-long non-overflow section that includes a reinforced concrete intake structure; (4) a 377-foot-long, 9.5-foot-diameter concrete penstock; (5) a 54.5-foot-long by 30-foot-wide reinforced concrete powerhouse; (6) one 3.645-megawatt horizontal Kaplan-type turbine-generator unit; (7) trashracks with 2.5-inch clear spacing; (8) a 4,160-volt, approximately 50-foot-long buried transmission line; (9) a switchyard; and (10) appurtenant facilities. The average annual generation was 10,092,492 kilowatt-hours for the period from 2016 to 2020.

EONY currently operates the project in run-of-river mode and discharges a minimum flow of 20 cubic feet per second (cfs) into the project's 1,250-foot-long bypassed reach to project aquatic resources.

As part of the license application, EONY filed a settlement agreement on behalf of itself, the U.S. Fish and Wildlife Service, and the New York State Department of Environmental Conservation. As part of the settlement agreement, EONY proposes to: (1) continue to operate the project in a run-of-river mode; (2) provide a minimum flow in the bypassed reach of 28 cfs; [2] (3) install seasonal trashracks with 1-inch spacing; (4) implement a Trashrack Operations and Maintenance Plan, a Bat and Eagle Protection Plan, an Invasive Species Management Plan, and an Impoundment Drawdown and Cofferdam Plan; and (5) implement several improvements to an existing fishing platform to make it accessible to persons with disabilities, including the addition of an accessible parking space, an associated access aisle and access route from the accessible parking space to the fishing platform, and modifications to the railing surrounding the fishing platform.

m. A copy of the application can 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. For assistance, contact FERC Online Support.

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (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 submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. The applicant must file no later than 60 days following the date of issuance of this notice: (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Deadline for Filing Comments, Recommendations, and Agency Terms and Conditions/Prescriptions—September 19, 2022.

Licensee's Reply to REA Comments—November 3, 2022

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: July 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–16115 Filed 7–26–22; 8:45 am]

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[1] All elevations are in National Geodetic Vertical Datum of 1929.

[2] EONY determined that the proposed 28-cfs minimum flow would not result in incremental losses of generation compared to the current condition because the field measurement of the existing minimum flow was approximately 28 cfs, which accounted for flashboard leakage and was most likely present during the term of the existing license.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4114–062]

Lower Saranac Hydro Partners, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Application:* Notice of Intent (NOI) to File License Application and Request to Use the Traditional Licensing Process (TLP).

b. *Project No.:* 4114–062.

c. *Date filed:* May 31, 2022.

d. *Submitted by:* Lower Saranac Hydro Partners, LLC (Lower Saranac).

e. *Name of Project:* Lower Saranac Hydroelectric Project.

f. *Location:* Located on the Saranac River, in Clinton County, New York. The project does not occupy any federal land.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. Kevin Webb, Licensing Manager, Lower Saranac Hydro Partners, LLC, 670 N Commercial Street, Suite 204 100, Manchester, NH 03101. Phone: (978) 935–6039, Email: *kwebb@centralriverspower.com.*

i. *FERC Contact:* Erin Stockschlaeder, Phone: (202) 502–8107, Email: *erin.stockschlaeder@ferc.gov.*

j. Lower Saranac filed its request to use the TLP on May 31, 2022 and provided public notice of its request on May 30, 2022. In a letter dated July 21, 2022, the Director of the Division of Hydropower Licensing approved Lower Saranac's request to use the TLP.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the New York State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Lower Saranac as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Lower Saranac filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed on the Commission's website (*https://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

o. The applicant states its unequivocal intent to submit an application for a new license for Project No. 4114. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by May 31, 2025.

p. Register online at *https://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: July 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–16116 Filed 7–26–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–2420–000]

Lockhart Solar PV II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Lockhart Solar PV II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 10, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: July 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–16118 Filed 7–26–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9954–01–R1]

Notice of Availability of a Draft Modification to the NPDES Aquaculture General Permit (AQUAGP) for Concentrated Aquatic Animal Production (CAAP) Facilities and Other Related Facilities in Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Draft NPDES General Permit VTG130000.

SUMMARY: The Director of the Water Division, U.S. Environmental Protection Agency—Region 1 (EPA), is providing a Notice of Availability of a Draft Modification to the National Pollutant Discharge Elimination System (NPDES) Aquaculture General Permit (AQUAGP) for discharges from Concentrated Aquatic Animal Production (CAAP) facilities and other related facilities to certain waters of the State of Vermont (federal facilities only). This Draft Modification NPDES AQUAGP (''Draft General Permit Modification'') updates the formaldehyde monitoring requirement for 2 facilities in Vermont. The Draft General Permit Modification is available on EPA Region 1's website at *https://www.epa.gov/npdes-permits/region-1-final-aquaculture-general-permit.* The Statement of Basis for the Draft General Permit Modification sets forth principal facts and the significant factual, legal, methodological, and policy questions considered in the development of the Draft General Permit Modification and is also available at the above listed website.

DATES: Public comments must be received by August 26, 2022.

ADDRESSES: Written comments on the Draft General Permit should be sent via email to: *Chien.Nathan@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Draft General Permit Modification, including the administrative record it is based upon, may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday, excluding holidays from Nathan Chien, U.S. EPA Region 1, Water Division, 5 Post Office Square, Suite 100, Mail Code 06–1, Boston, MA 02109–3912; telephone: 617–918–1649; email: *Chien.Nathan@epa.gov.* A reasonable fee may be charged for copying requests.

SUPPLEMENTARY INFORMATION:

Public Comment Information: Interested persons may submit written comments on the Draft General Permit Modification to EPA Region 1 at the address listed above. In reaching a final decision on this Draft General Permit Modification, the Regional Administrator will respond to all significant comments and make responses available to the public on EPA's website. All comments must be postmarked or delivered by the close of the public comment period.

Authority: This action is being taken under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2022–16069 Filed 7–26–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2022–0627; FRL–10084–01–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended (CAA or the Act), notice is given of a proposed consent decree in *Center for Biological Diversity, et al.* v. *Regan,* No. 3:22–cv–01855–WHO (N.D. Cal.). On March 24, 2022, Plaintiffs Center for Biological Diversity, Center for Environmental Health, Environmental Integrity Project, and WildEarth Guardians filed a complaint in the United States District Court for the Northern District of California. Plaintiffs alleged that the Environmental Protection Agency (EPA or the Agency) failed to perform certain non-discretionary duties in accordance with the Act to timely determine the attainment status of certain areas with respect to the 2008 ozone National Ambient Air Quality Standards (2008 Ozone NAAQS). The proposed consent decree would establish deadlines for EPA to sign notices of final action.

DATES: Written comments on the proposed consent decree must be received by August 26, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2022–0627, online at *https://www.regulations.gov* (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Additional Information about Commenting on the Proposed Consent Decree'' heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Pettit, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone (202) 566–2879; email address *pettit.elizabetha@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2022–0627) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through *https://www.regulations.gov.* You may use *https://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

II. Additional Information About the Proposed Consent Decree

The proposed consent decree would establish deadlines for EPA to take action pursuant to CAA sections 107(d), 179(c)(1), 181(b)(2)(A), 179(c)(2), and 181(b)(2)(B) to sign notices of final action determining whether certain areas attained the 2008 NAAQS by the attainment date, in this case, July 20, 2021. First, on April 13, 2022, EPA published a proposed rulemaking that proposes to determine that Chicago-Naperville, Illinois-Indiana-Wisconsin; Dallas-Fort Worth, Texas; Houston-Galveston-Brazoria, Texas; New York-North New Jersey-Long Island, New

York-New Jersey-Connecticut; and Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado failed to attain the 2008 Ozone NAAQS by July 20, 2021 and that Greater Connecticut, Connecticut attained the 2008 Ozone NAAQS by July 20, 2021; all of these areas had been classified as Serious nonattainment for the 2008 Ozone NAAQS (87 FR 21825). The proposed consent decree would require EPA to sign a final rule on these areas [1] by September 15, 2022.

Second, on July 14, 2022, EPA published a proposed rulemaking that proposes to determine that the Nevada County (Western part) and Ventura County areas in California, both classified as Serious for the 2008 Ozone NAAQS, attained the 2008 Ozone NAAQS by the July 20, 2021 attainment date. (87 FR 42126). The proposed consent decree would require EPA to sign a final rule on these two California areas by December 16, 2022.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information About Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2022–0627, via *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, 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 additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *https://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

Gautam Srinivasan,

Associate General Counsel.

[FR Doc. 2022–16029 Filed 7–26–22; 8:45 am]

BILLING CODE 6560–50–P

[1] With the exception of Chicago-Naperville, Illinois-Indiana-Wisconsin, which EPA determined attained the 2008 Ozone NAAQS in three separate final rules (87 FR 21027, April 11, 2022; 87 FR 30821 and 30828, May 20, 2022), rendering this claim moot.

FEDERAL MARITITME COMMISSION

Sunshine Act Meetings; Correction

AGENCY: Federal Maritime Commission.

ACTION: Notice; correction.

SUMMARY: The Federal Maritime Commission published a document in the **Federal Register** of July 18, 2022, concerning the Sunshine Act Meetings for our July 27, 2022, Commission Meeting. The document contained incorrect agenda item #3.

FOR FURTHER INFORMATION CONTACT: William Cody, 202–523–5725.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of July 18, 2022, in FR Doc. 2022–15400, on page 42725, item #3 titled ''3. Staff Update on Ocean Carrier Practices with Respect to Congestion or Related Surcharges'' should be removed, and item #4 titled ''4. Staff Briefing on Enforcement Process and Pending Matters'' should be renumbered as item #3.

Dated: July 25, 2022.

William Cody,

Secretary.

[FR Doc. 2022–16188 Filed 7–25–22; 4:15 pm]

BILLING CODE 6730–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; OCC Data Collection for Tribal Annual Report (Office of Management and Budget (OMB) #0970–0430)

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 three-year extension of the form ACF–700 Tribal Annual Report (OMB #0970–0430, Expiration date: January 31, 2023). No changes are proposed.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: On an annual basis, Tribal Lead Agencies for the Child Care

and Development Fund (CCDF) are required to submit aggregate information on services provided via the CCDF Tribal Annual Report, also known as the ACF–700 report and offers the Office of Child Care (OCC) a glimpse into how CCDF program dollars are being spent. The ACF–700 report captures administrative data about the number of families and children served. The report also contains specific questions that gather programmatic information about Tribal quality activities, coordination of activities with other early childhood programs, use of funds, technical assistance needs, use of the Data Tracker software, and progress toward identified goals. The data derived from this report allows OCC to generate and analyze aggregate information, thereby giving OCC a more comprehensive understanding of Tribal program activities more easily. The data are essential for demonstrating the accomplishments of Tribal child care programs.

Respondents: Tribal Grantees receiving CCDF funding. Tribes that operate child care under Public Law 102–477 Indian Employment, Training, and Related Services Plan are exempt from the ACF–700.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
ACF–700	141 (Tribes with small allocations)	3	19	7,866	2,622
ACF–700	78 (Tribes with medium/large allocations).	3	26	6,474	2,158

Estimated Total Annual Burden Hours: 4,780.

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: 42 U.S.C. 9857.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–16067 Filed 7–26–22; 8:45 am]

BILLING CODE 4184–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Trafficking Victim Assistance Program Data (OMB #0970–0467)

AGENCY: Office on Trafficking in Persons, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office on Trafficking in Persons (OTIP), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is requesting renewal with revisions of an approved information collection: Trafficking Victim Assistance Program Data (Office of Management and Budget (OMB) #0970–0467).

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 Trafficking Victims Protection Act of 2000 (TVPA), as amended, authorizes the Secretary of HHS to expand benefits and services to foreign nationals in the United States who are victims of severe forms of trafficking in persons. OTIP funds time-limited comprehensive case management services to foreign national adults confirmed and potential victims of a severe form of human trafficking, as defined by the TVPA of 2000, as amended, who are seeking or have received HHS certification. TVAP establishes local regional presence to coordinate project activities and direct services. Case management services must be provided to qualified persons directly by full-time case managers that are staffed by the prime recipient and may also be provided through a network of per capita service providers, which provide direct services and community referrals.

OTIP proposes to continue to collect information to measure grant project performance, provide technical assistance to grant recipients, assess program outcomes, inform program evaluation, respond to congressional inquiries and mandated reports, and inform policy and program development that is responsive to the needs of victims.

The information collection captures information on participant demographics (*e.g.,* age, gender identity, race/ethnicity, country of origin), type of trafficking experienced (sex, labor, or both), types of services and benefits provided, along with aggregate information on the amount of money spent on each type of service provided, outreach activities conducted, sub recipients enrolled, and the types of trainings provided to relevant audiences. Minor updates have been made to performance indicators under this collection in consultation with existing grant recipients and stakeholders, to reduce respondent burden, strengthen client privacy and confidentiality, and bring the collection into alignment with program requirements under the revised TVAP. Specifically, to reduce burden and strengthen client privacy and confidentiality, the following TVAP client-level indicators have been removed: Type of Intake, Date of Birth, Disability Status, Services Requested at Intake, Benefits Requested at Intake, Trafficker Relationship to Victim. To bring the collection into alignment with the revised TVAP requirements, outreach-specific indicators have been added, specifically: Number of Outreach

Activities Conducted, Date of Outreach Activity, Outreach Settings, Target Population(s), Number of Victims Identified, Screening Tool(s) Used.

Respondents: Trafficking Victim Assistance Program Grant Recipients and Clients of those programs, specifically the: Trafficking Victim Assistance Program (HHS–2022–ACF–IOAS–OTIP–ZV–0150), Aspire: Child Trafficking Victim Assistance Demonstration Program (HHS–2022–ACF–IOAS–OTIP–TV–0099), Victims of Human Trafficking Services and Outreach Program–Pacific Region Demonstration Program (VHT–SO Pacific) (HHS–2022–ACF–IOAS–OTIP–ZV–0038) and the Lighthouse: Services, Outreach, and Awareness for Labor Trafficking (Lighthouse) Demonstration Program (HHS–2022–ACF–IOAS–OTIP–ZV–0059).

ANNUAL BURDEN ESTIMATES

Instrument	Total Number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Client Characteristics and Program Entry	6,600	1	0.75	4,950	1,650
Client Case Closure	6,600	1	0.167	1,102.2	367.4
Barriers to Service Delivery and Monitoring	386	4	0.167	257.85	85.95
Client Service Use and Delivery	6,600	1	0.25	1,650	550
Victim Outreach	386	4	0.3	463.2	154.4
Training	386	4	0.5	772	257.3
Subrecipient Enrollment	193	2	0.167	64.5	21.5
TVAP Spending	193	1	0.5	96.5	32.2

Estimated Total Annual Burden Hours: 3,118.75.

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: 22 U.S.C. 7105)

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–16065 Filed 7–26–22; 8:45 am]

BILLING CODE 4184–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Domestic Victims of Human Trafficking Program Data (OMB #0970–0542)

AGENCY: Office on Trafficking in Persons, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office on Trafficking in Persons (OTIP), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is requesting renewal with revisions of an approved information collection: Domestic Victims of Human Trafficking (DVHT) Program Data (OMB #0970–0542; expiration date 3/31/2023).

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Trafficking Victims Protection Act of 2000 (TVPA), as amended, authorizes the Secretary of HHS to expand benefits and services to victims of severe forms of trafficking in persons in the United States (U.S.), without regard to their immigration status. The TVPA also authorizes HHS to establish and strengthen programs to assist U.S. citizens and lawful permanent residents who have experienced sex trafficking or severe forms of trafficking in persons (22 U.S.C. 7105(f)(1)). Acting under a delegation of authority from the Secretary of HHS, ACF awards cooperative agreements to organizations to establish a program to assist U.S. citizens and lawful permanent residents who have experienced human trafficking—the DVHT Program. The DVHT Program is inclusive of the following two distinct programs: the Domestic Victims of Human Trafficking Services and Outreach Program (DVHT–SO) and the Demonstration Grants to Strengthen the Response to Victims of Human Trafficking in Native Communities Program (VHT–NC). Through the DVHT Program, grant recipients provide comprehensive case management to domestic survivors of human trafficking in traditional case management and Native community settings.

OTIP proposes to continue to collect information to measure grant project performance, provide technical assistance to grant recipients, assess program outcomes, inform program evaluation, respond to congressional inquiries and mandated reports, and inform policy and program development that is responsive to the needs of victims.

The information collection captures information on participant demographics (*e.g.,* age, gender identity, race/ethnicity), type of trafficking experienced (sex, labor, or both), types of services and benefits provided, along with aggregate information on outreach activities conducted, subrecipients enrolled, and the types of trainings provided to relevant audiences. Minor updates have been made to performance indicators under this collection, in consultation with existing grant recipients and stakeholders, to reduce respondent burden and strengthen privacy and confidentiality. Specifically, to reduce burden and

strengthen client privacy and confidentiality, the following DVHT client-level indicators have been removed: Type of Intake, Date of Birth, Disability Status, Services Requested at Intake, Benefits Requested at Intake, and Trafficker Relationship to Victim.

Respondents: DVHT Program Grant Recipients and Clients of those programs, specifically DVHT–SO and VHT–NC funding recipients.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Client Characteristics and Program Entry	1700	1	0.75	1,275	425
Client Case Closure	1700	1	0.167	283.9	94.6
Barriers to Service Delivery and Monitoring	35	4	0.167	23.4	7.8
Client Service Use and Delivery	1700	1	0.25	425	141.7
Victim Outreach	35	4	0.3	42	14
Training	35	4	0.5	70	23.3
Subrecipient Enrollment	35	3	0.167	17.5	5.8

Estimated Total Annual Burden Hours: 712.2.

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: 22 U.S.C. 7105)

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–16066 Filed 7–26–22; 8:45 am]

BILLING CODE 4184–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Provision of Child Support Services in IV–D Cases Under the Hague Child Support Convention (OMB #0970–0488)

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), is requesting a three-year extension with proposed revisions to the Hague Child Support Forms (OMB #0970–0488, expiration February 28, 2023). There are two new forms being incorporated.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov*. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: On January 1, 2017, the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (the Convention) entered into force for the United States. This multilateral Convention contains groundbreaking provisions that, on a worldwide scale, establish uniform, simple, fast, and inexpensive procedures for the processing of international child support cases. Under the Convention, U.S. states process child support cases with other countries that have ratified the Convention under the requirements of the Convention and Article 7 of the Uniform Interstate Family Support Act (UIFSA 2008). In order to comply with the Convention, the U.S. implements the Convention's case processing forms.

Newly incorporated into this information collection are two additional forms, Request for Specific Measures and Request for Specific Measures—Response, which were approved in June 2022 for use under the Convention. The other forms remain unchanged.

State and federal law require states to use federally approved case processing forms. Section 311(b) of UIFSA 2008, which has been enacted by all 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands, requires states to use forms mandated by federal law. 45 CFR 303.7 also requires child support programs to use federally approved forms in intergovernmental IV–D cases unless a country has provided alternative forms as a part of its chapter in a Caseworker's Guide to Processing Cases with Foreign Reciprocating Countries.

Respondents: State agencies administering a child support program under title IV–D of the Social Security Act.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Annual burden hours
Annex I: Transmittal form under Article 12(2)	54	41	1	2,214
Annex II: Acknowledgment form under Article 12(3)	54	81	.5	2,187
Annex A: Application for Recognition or Recognition and Enforcement, including restricted information on the applicant	54	16	.5	432
Annex A: Abstract of Decision	54	4	1	216
Annex A: Statement of Enforceability of Decision	54	16	0.17	147
Annex A: Statement of Proper Notice	54	4	.5	108
Annex A: Status of Application Report—Article 12	54	34	.33	606
Annex B: Application for Enforcement of a Decision Made or Recognized in the Requested State, including restricted information on the applicant	54	17	.5	459
Annex B: Status of Application Report—Article 12	54	33	.33	588
Annex C: Application for Establishment of a Decision, including restricted information on the Applicant	54	4	.5	108
Annex C: Status of Application Report—Article 12	54	8	.33	143
Annex D: Application for Modification of a Decision, including Restricted Information on the Applicant	54	4	.5	108
Annex D: Status of Application Report—Article 12	54	8	.33	143
Annex E: Financial Circumstances Form	54	41	2	4,428
Annex F: Request for Specific Measures—Article 7(1)	54	2	.17	18
Annex F: Request for Specific Measures—Response—Article 7(1)	54	8	.17	73

Estimated Total Annual Burden Hours: 11,978.

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: 42 U.S.C. 654(20) and 666(f).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–16068 Filed 7–26–22; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0995]

Ivax Pharmaceuticals, Inc.; Withdrawal of Approval of an Abbreviated New Drug Application for Chloramphenicol Capsules, 250 Milligrams

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing the approval of abbreviated new drug application (ANDA) 062247 for chloramphenicol capsules, 250 milligrams (mg), held by Ivax Pharmaceuticals, Inc. (Ivax). Ivax requested withdrawal of this application and has waived its opportunity for a hearing.

DATES: Approval is withdrawn as of July 27, 2022.

FOR FURTHER INFORMATION CONTACT: Nikki Mueller, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6280, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: On April 28, 1980, FDA approved ANDA 062247 for chloramphenicol capsules, 250 mg, an antibiotic indicated to treat only serious infections for which less potentially dangerous drugs are ineffective or contraindicated. CHLOROMYCETIN (chloramphenicol) Capsules, 250 mg (ANDA 060591), was the basis of submission for Ivax's ANDA 062247 for chloramphenicol capsules, 250 mg. In a **Federal Register** notice dated July 13, 2012 (77 FR 41412), FDA determined under 21 CFR 314.161 that CHLOROMYCETIN (chloramphenicol) Capsules, 250 mg (ANDA 060591), was withdrawn for safety reasons and that additional nonclinical and possibly clinical studies of safety and efficacy would be necessary before CHLOROMYCETIN (chloramphenicol) Capsules, 250 mg, could be considered for reintroduction to the market. The holders of approved applications for chloramphenicol capsules, 250 mg, had ceased marketing of the drug products before July 13, 2012.

On March 29, 2013, Ivax requested that FDA withdraw approval of ANDA 062247 for chloramphenicol capsules, 250 mg. On June 17, 2021, Ivax requested that FDA withdraw approval of ANDA 062247 for chloramphenicol capsules, 250 mg, specifically under § 314.150(d) (21 CFR 314.150(d)) and waived its opportunity for a hearing. For the reasons discussed above, and pursuant to the application holder's request under 314.150(d), approval of ANDA 062247 for chloramphenicol capsules, 250 mg, and all amendments and supplements thereto, is withdrawn under § 314.150(d). Distribution of chloramphenicol capsules, 250 mg, into interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the Federal Food,

Drug, and Cosmetic Act (21 U.S.C. 355(a) and 331(d))).

Dated: July 20, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–16077 Filed 7–26–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–3132]

General Clinical Pharmacology Considerations for Neonatal Studies for Drugs and Biological Products; 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 final guidance for industry entitled ''General Clinical Pharmacology Considerations for Neonatal Studies for Drugs and Biological Products.'' This guidance is intended to assist sponsors of investigational new drug applications (INDs) and applicants of new drug applications (NDAs), biologics license applications (BLAs), and supplements to such applications who are planning to conduct clinical studies in neonatal populations. This guidance finalizes the draft guidance of the same title issued on August 1, 2019.

DATES: The announcement of the guidance is published in the **Federal Register** on July 27, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–3132 for ''General Clinical Pharmacology Considerations for Neonatal Studies for Drugs and Biological Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this 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 to 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 guidance document.

FOR FURTHER INFORMATION CONTACT: Elimika Pfuma Fletcher, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2162, Silver Spring, MD 20993, 301–796–3473, *Elimika.Fletcher@fda.hhs.gov* 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, 240–402–7911, *Stephen.Ripley@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry ''General Clinical Pharmacology Considerations for Neonatal Studies for Drugs and Biological Products.'' This guidance is intended to assist sponsors of INDs and applicants of NDAs, BLAs, and supplements to such applications who are planning to conduct clinical studies in neonatal populations.

In 2012, the Best Pharmaceuticals for Children Act (Pub. L. 107–109) (BPCA)

and the Pediatric Research Equity Act (Pub. L. 108–155) were made permanent under Title V of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) (FDASIA). FDASIA requires that all BPCA requests for pediatric drug studies include a rationale for not including neonatal studies if none are requested.

Given that most drugs used in neonatal intensive care units (NICUs) are used in an off-label capacity, it is important that drug information be obtained in neonates to address gaps in neonatal labeling. In addition, therapies need to be developed for conditions unique to neonates. New approaches to the study of drugs in neonates should consider the diversity of the patient population and underlying conditions that are cared for in NICUs. Therefore, this guidance addresses subgroup classifications of neonates; general pharmacokinetic, pharmacodynamic, and pharmacogenomic considerations for clinical pharmacology studies in neonates; and clinical pharmacology considerations for planned studies in neonates.

This guidance finalizes the draft guidance entitled ''General Clinical Pharmacology Considerations for Neonatal Studies for Drugs and Biological Products'' issued on August 1, 2019 (84 FR 37653). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include the addition of a section addressing immunogenicity, additional text regarding consideration of the total volume administered to neonates, and additional clarity regarding the use of microsampling methodology. In addition, editorial changes were made to improve clarity.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''General Clinical Pharmacology Considerations for Neonatal Studies for Drugs and Biological Products.'' 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 refers to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (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 related to institutional review boards in 21 CFR part 56 have been approved under OMB control number 0910–0130. The collections of information in 21 CFR part 314 for the submission of new drug applications have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 for the submission of biologics license applications have been approved under OMB control number 0910–0338. The collections of information 21 CFR part 312 for the submission of investigational new drug applications have been approved under OMB control number 0910–0014. The collections of information in §§ 312.47 and 312.82 for requesting meetings with FDA about drug development programs have been approved under OMB control number 0910–0429. The collections of information for the submission of prescription drug labeling in 21 CFR 201.56 and 21 CFR 201.57 have been approved under OMB control number 0910–0572.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents, https://www.regulations.gov,* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances.*

Dated: July 21, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–16076 Filed 7–26–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2011–D–0125 and FDA–2021–N–0132]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at *https://www.reginfo.gov/public/do/PRAMain.* An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
Establishing That a Tobacco Product Was Commercially Marketed in the United States As of February 15, 2007	0910–0775	7/31/2025
Study of How Consumers Use Flavors to Make Inferences About Electronic Nicotine Delivery System (ENDS) Product Qualities and Intentions to Use (Phase 2)	0910–0907	7/31/2025

Dated: July 21, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–16075 Filed 7–26–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–1302]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Registration of Food Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by August 26, 2022.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0502. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Registration of Food Facilities

OMB Control Number 0910–0502—Extension

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) (Pub. L. 107–188) amended the Federal Food, Drug, and Cosmetic Act (FD&C Act), to require, among other things, domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States to register with FDA. Sections 1.230 to 1.235 of our regulations (21 CFR 1.230 to 1.235) set forth the requirements for the registration of food facilities. Information provided to us under these regulations helps us to quickly notify the facilities that might be affected by a deliberate or accidental contamination of the food supply. In addition, data collected through registration is used to support FDA enforcement activities and to screen imported food shipments.

Advance notice of imported food allows FDA, with the support of the Bureau of Customs and Border Protection, to target import inspections more effectively and help protect the nation's food supply against terrorist acts and other public health emergencies. If a facility is not registered or the registration for a facility is not updated when necessary, we may not be able to contact the facility and may not be able to target import inspections effectively in case of a known or potential threat to the food supply or other food-related emergency, putting consumers at risk of consuming hazardous food products that could cause serious adverse health consequences or death.

To assist respondents of the information collection, we developed the following forms. Each facility that manufactures, processes, packs, or holds food for human or animal consumption in the United States must register with FDA using Form FDA 3537 entitled ''Food Facility Registration'' (§ 1.231), unless exempt under 21 CFR 1.226 from the requirement to register. To cancel a registration, respondents must use Form FDA 3537a entitled ''Cancellation of Food Facility Registration'' (§ 1.235). The terms ''Form FDA 3537'' and ''Form FDA 3537a'' refer to both the paper version of each form and the electronic system known as the Food Facility Registration Module, which is available at *https://www.access.fda.gov.* Registrations, updates, and cancellations are required to be submitted electronically. Domestic facilities are required to register whether or not food from the facility enters interstate commerce. Foreign facilities that manufacture, process, pack, or hold food also are required to register unless food from that facility undergoes further processing (including packaging) by another foreign facility outside the United States. However, if the further manufacturing/processing conducted by the subsequent facility consists of adding labeling or any similar activity of a de minimis nature, the former facility is required to register. In addition to the initial registration requirements, a facility is required to submit timely updates within 60 days of a change to any required information on its registration form, using Form FDA 3537 (§ 1.234), and to cancel its registration when the facility ceases to operate or is sold to new owners or ceases to manufacture, process, pack, or hold food for consumption in the United States, using Form FDA 3537a (§ 1.235).

Registration is one of several tools under the Bioterrorism Act that enables us to act quickly in responding to a threatened or actual bioterrorist attack on the U.S. food supply or other food-related emergency. Further, in the event of an outbreak of foodborne illness, the information provided helps us determine the source and cause of the event and enables us to quickly notify food facilities that might be affected by an outbreak, terrorist attack, or other emergency. Finally, the registration requirements enable us to quickly identify and remove from commerce an article of food for which there is a reasonable probability that the use of, or exposure to, such article of food will cause serious adverse health consequences or death to humans or animals.

Description of Respondents: Respondents to this collection of information are owners, operators, or agents in charge of domestic or foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States.

In the **Federal Register** of January 13, 2022 (87 FR 2159), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity; 21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total
New domestic facility registration; 1.230–1.233	9,795	1	9,795	2.7	26,447
New foreign facility registration; 1.230–1.233	13,697	1	13,697	8.7	119,164
Updates; 1.234	53,836	1	53,836	1.2	64,603
Cancellations; 1.235	6,390	1	6,390	1	6,390
Biennial renewals; 1.235	97,883	1	97,883	0.38	37,196
3rd party registration verification	41,256	1	41,256	0.25	10,314
U.S. Agent verification	57,070	1	57,070	0.25	14,268
Total			279,927		278,382

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: July 21, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–16062 Filed 7–26–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1802]

Cancer Clinical Trial Eligibility Criteria: Available Therapy in Non-Curative Settings; 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 final guidance for industry entitled ''Cancer Clinical Trial Eligibility Criteria: Available Therapy in Non-Curative Settings.'' The guidance provides recommendations to sponsors of clinical trials of investigational cancer drugs regarding the inclusion of patients who have not previously received available therapy (commonly referred to as existing treatment options) for their cancer in the non-curative setting. This guidance finalizes the draft guidance of the same title issued on June 24, 2021.

DATES: The announcement of the guidance is published in the **Federal Register** on July 27, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–1802 for ''Cancer Clinical Trial Eligibility Criteria: Available Therapy in Non-Curative Settings.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management

Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002 or to 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 guidance document.

FOR FURTHER INFORMATION CONTACT: Jennifer Gao, Oncology Center of Excellence, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2135, Silver Spring, MD 20993–0002, 240–402–4683; 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, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Cancer Clinical Trial Eligibility Criteria: Available Therapy in Non-Curative Settings.'' The guidance provides recommendations regarding the inclusion of patients who have not received available therapy for their cancer in clinical trials of investigational cancer drugs and biological products in the non-curative setting. For the purposes of this guidance, non-curative is generally defined as: (1) unresectable, locally advanced, or metastatic disease in solid tumors or (2) hematologic malignancies with unfavorable long-term overall survival.

Under 21 CFR part 312, which applies to clinical investigations of drugs and biological products, FDA must determine that study subjects are not exposed to an unreasonable and significant risk of illness or injury (312.42(b)(1)(i) and (b)(2)(i)) to allow such trials to proceed. Therefore, in clinical trials evaluating investigational cancer drugs, eligibility criteria should generally require that patients have received available therapy(ies) that offer the potential for cure in a substantial proportion of patients. Alternatively, such available therapy should be administered to all patients in the trial, where the investigational drug is added to such therapy. However, eligibility criteria in which patients receive an investigational drug(s) in lieu of available therapy are reasonable in the non-curative setting when patients have been provided with adequate information to make an informed decision on trial participation. The guidance describes information that should be included in the informed consent and includes recommendations regarding evaluation of results when this approach is taken.

This guidance finalizes the draft guidance entitled ''Cancer Clinical Trial Eligibility Criteria: Available Therapy in Non-Curative Settings'' issued on June 24, 2021 (86 FR 33710). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include additional recommendations for safety evaluation in early stage dose escalation studies.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Cancer Clinical Trial Eligibility Criteria: Available Therapy in Non-Curative Settings.'' 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 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 guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in part 312 have been approved under OMB control number 0910–0014; 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 guidance at either *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 21, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–16074 Filed 7–26–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–4417]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Pharmaceutical Voluntary Consensus Standard Recognition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by August 26, 2022.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The title of this information collection is ''Pharmaceutical Voluntary Consensus Standard Recognition.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–45, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Pharmaceutical Voluntary Consensus Standard Recognition

OMB Control Number 0910—NEW

This information collection helps support implementation of FDA's Center for Drug Evaluation and Research's (CDER) Program for the Recognition of Voluntary Consensus Standards Related to Pharmaceutical Quality. The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) and Circular A–119 by the Office of Management and Budget (OMB) have established Federal Government policies to improve the internal management of the executive branch by directing agencies to use voluntary consensus standards developed or adopted by a standards developing organization—rather than Government-unique standards—except where these standards are inconsistent with applicable law or otherwise impractical. We have developed Agency guidance to communicate procedures respondents can follow to submit requests for recognition of a voluntary consensus standard, as well as procedures CDER will follow when a request is received. The draft guidance entitled, ''CDER's Program for the Recognition of Voluntary Consensus Standards Related to Pharmaceutical Quality'' (February 2019), outlines justifications for why a standard may be recognized wholly, partly, or not at all. (The draft guidance is available on our website at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/cders-program-recognition-voluntary-consensus-standards-related-pharmaceutical-quality.*) [1] The guidance also communicates that interested parties may request recognition of a standard, allowing CDER to:

- receive a candidate consensus standard, with relevant information (*e.g.,* the scope of the standard and the purpose), from internal or external parties for informal recognition;
- determine whether to informally recognize a standard in whole or in part following an internal scientific evaluation; and
- list the informally recognized standards in a publicly searchable database on FDA's website, accompanied by an information sheet describing the scope and the extent of informal recognition of that standard and other relevant information.

In the **Federal Register** of February 14, 2019 (84 FR 4076), FDA published a 60-day notice announcing the availability of the draft guidance and invited comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

Guidance activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (hours)	Total burden hours	Hourly wage rate	Total respondent costs
Submission of request for recognition of a voluntary consensus standard (page 2, page 5, section B.1)	9	1	9	1	9	$87.12	$784.08

Based on our experience with similar programs, we assume nine respondents will each submit one request for standard recognition annually, and that it will require 1 hour to prepare. We also assume industry wage rates of $87.12, for a total cost of $784.08 annually.

Dated: July 21, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–16063 Filed 7–26–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for

[1] When final, this guidance will represent FDA's current thinking on this topic.

occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on May 1, 2022, through May 31, 2022. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Health Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of HHS) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Carole Johnson,

Administrator.

List of Petitions Filed

1. Carolyn Sawyer, Campti, Louisiana, Court of Federal Claims No: 22–0489V
2. Salvatore Scire, Long Branch, New Jersey, Court of Federal Claims No: 22–0492V
3. Lindsay A. Mack, Yakima, Washington, Court of Federal Claims No: 22–0493V
4. Evelyn Newey, Phoenix, Arizona, Court of Federal Claims No: 22–0494V
5. Leah Dean, Minnetonka, Minnesota, Court of Federal Claims No: 22–0495V
6. Ann Smith, Colorado Springs, Colorado, Court of Federal Claims No: 22–0498V
7. Kathryn T. Ward, Rochester, New York, Court of Federal Claims No: 22–0503V
8. Kelly Chisholm, Greensboro, North Carolina, Court of Federal Claims No: 22–0504V
9. Mary Little, Statesville, North Carolina, Court of Federal Claims No: 22–0505V
10. Mercedes Kotalik and Andrew Brabec on behalf of Z.B., Norfolk, Nebraska, Court of Federal Claims No: 22–0507V
11. Bernadette Rogers on behalf of Willie Lee Williams, Deceased, Tampa, Florida, Court of Federal Claims No: 22–0510V
12. Marco Ramos, Santa Monica, California, Court of Federal Claims No: 22–0512V
13. Sameh Tawfik, New York, New York, Court of Federal Claims No: 22–0514V
14. Gayla Dreith, Las Vegas, Nevada, Court of Federal Claims No: 22–0517V
15. Joan Kresl, Downers Grove, Illinois, Court of Federal Claims No: 22–0518V
16. Marilyn Hartogh, Cedar Rapids, Iowa, Court of Federal Claims No: 22–0519V
17. Dorota Szok, Plainville, Connecticut, Court of Federal Claims No: 22–0520V
18. Kaitlin Wagner, Appleton, Wisconsin, Court of Federal Claims No: 22–0521V
19. Joseph Hegedus, Maitland, Florida, Court of Federal Claims No: 22–0522V
20. Genevieve Watson, Woodland Park, Colorado, Court of Federal Claims No: 22–0523V
21. Lorne Nix, Woodland Hills, California, Court of Federal Claims No: 22–0524V
22. Donna Tincher, Hanford, California, Court of Federal Claims No: 22–0525V
23. Stephanie McCoy, Phoenix, Arizona, Court of Federal Claims No: 22–0527V
24. Erika Snell, Phoenix, Arizona, Court of Federal Claims No: 22–0528V
25. Joshua D. Howard, Ashburn, Virginia, Court of Federal Claims No: 22–0530V
26. Corey Shaw, Raleigh, North Carolina, Court of Federal Claims No: 22–0532V
27. Simon Myers, Lafayette, Indiana, Court of Federal Claims No: 22–0534V
28. Taylor White on behalf of T.J., Lake Stevens, Washington, Court of Federal Claims No: 22–0535V
29. Dakota Palmore, Vancouver, Washington, Court of Federal Claims No: 22–0536V
30. Grace Eger, Chicago, Illinois, Court of Federal Claims No: 22–0540V
31. Michael Veytsel, Newark, New Jersey, Court of Federal Claims No: 22–0544V
32. Viola Taylor, Newport News, Virginia, Court of Federal Claims No: 22–0545V
33. John Holubowicz, Jackson, Michigan, Court of Federal Claims No: 22–0549V
34. Kevin Heckathorn, La Vista, Nebraska, Court of Federal Claims No: 22–0550V
35. Madeleine Chapman, Phoenix, Arizona, Court of Federal Claims No: 22–0551V
36. Christine Stangarone, Elmhurst, Illinois, Court of Federal Claims No: 22–0552V
37. Harmony Calhoun, Phoenix, Arizona, Court of Federal Claims No: 22–0554V
38. Holly Rolley, Williamsburg, Virginia, Court of Federal Claims No: 22–0556V
39. Jose Sanchez, New York, New York, Court of Federal Claims No: 22–0557V
40. Kevin Scherer, Buffalo, New York, Court of Federal Claims No: 22–0558V
41. Rocio Blanco, Pasadena, California, Court of Federal Claims No: 22–0559V
42. Peter Kouzmov, San Francisco, California, Court of Federal Claims No: 22–0561V
43. Iris Rivera Morales, Fort Myers, Florida, Court of Federal Claims No: 22–0563V
44. Warren Knecht, Metairie, Louisiana, Court of Federal Claims No: 22–0564V
45. Patricia Alanis on behalf of I.A., Berwyn, Illinois, Court of Federal Claims No: 22–0565V
46. Momen Ahmed, Palmetto, Florida, Court of Federal Claims No: 22–0566V
47. Lynnette Westbrook, Newton Grove, North Carolina, Court of Federal Claims No: 22–0568V
48. Kathy Frye, Gastonia, North Carolina, Court of Federal Claims No: 22–0569V
49. Johanne Lapointe, Spokane Valley, Washington, Court of Federal Claims No: 22–0572V
50. Venkata Maddula, New York, New York, Court of Federal Claims No: 22–0574V
51. Bethany Bier, Wilson, North Carolina, Court of Federal Claims No: 22–0577V
52. John M. Anderson, Waupun, Wisconsin, Court of Federal Claims No: 22–0580V
53. Deborah Casteel, Johnstown, Pennsylvania, Court of Federal Claims No: 22–0588V
54. Ninette Hanna Holbrook, Orlando, Florida, Court of Federal Claims No: 22–0589V
55. Mary Conklin, Brodheadsville, Pennsylvania, Court of Federal Claims No: 22–0591V
56. Barbara Gowdy, Jacksonville, Florida, Court of Federal Claims No: 22–0592V
57. Christian Turner-Stallings, El Paso, Texas, Court of Federal Claims No: 22–0593V
58. Katherine Miller, Langhorne, Pennsylvania, Court of Federal Claims No: 22–0594V
59. Dennis Spicer, Hazard, Kentucky, Court of Federal Claims No: 22–0595V
60. Megan Hartz, Alhambra, California, Court of Federal Claims No: 22–0596V
61. Dianne Greene, McKinney, Texas, Court of Federal Claims No: 22–0597V

[FR Doc. 2022–16093 Filed 7–26–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Renal Hypertension.

Date: August 5, 2022.

Time: 11:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aster Juan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–435–5000, *juana2@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 21, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–16053 Filed 7–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID 2022 DMID Omnibus BAA (HHS–NIH–NIAID–BAA2022–1) Research Area 004: Development of In Vitro Diagnostics for Biodefense, Antimicrobial Resistant Infections (AMR), and Emerging Infectious Diseases (N01).

Date: August 22–24, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E72A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Frank S. De Silva, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E72A, Rockville, MD 20852, (240) 669–5023, *fdesilva@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 21, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–16045 Filed 7–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: The Development of an in vivo Anti-CD19 Chimeric Antigen Receptor (CAR) for the Treatment of CD19-Expressing Human Cancers

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the Supplementary Information section of this notice to Capstan Therapeutics (Capstan), located in San Diego, California, the United States of America.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before August 11, 2022 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated an Exclusive Patent License should be directed to: David A. Lambertson, Ph.D., Technology Transfer Manager, NCI Technology Transfer Center, Telephone: (240)-276–6467; Email: *david.lambertson@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

United States Provisional Patent Application 62/006,313 (HHS Reference E–042–2014–0–US–01), filed 2 June 2014; PCT Application PCT/US2015/033473 (HHS Reference E–042–2014–0–PCT–02), filed 1 June 2015; Australian Patent 2015270912 (HHS Reference E–042–2014–0–AU–03), issued 17 December 2020; Canadian Patent Application 2951045 (HHS Reference E–042–2014–0–CA–04), filed 1 June 2015; Chinese Patent 201580033802.5 (HHS Reference E–042–2014–0–CN–05), issued 31 August 2021; European Patent 3149044 (HHS Reference E–042–2014–0–EP–06), issued 21 October 2020 and validated in Germany (HHS Reference E–042–2014–0–DE–19), Spain (HHS Reference E–042–2014–0–ES–20), France (HHS Reference E–042–2014–0–FR–21), The United Kingdom (HHS Reference E–042–2014–0–GB–22), Italy (HHS Reference E–042–2014–0–IT–23), and Ireland (HHS Reference E–042–2014–0–IE–24); Israeli Patent 249305 (HHS Reference E–042–2014–0–IL–07), issued 1 October 2021; Indian Patent Application 201647041047 (HHS Reference E–042–2014–0–IN–08), filed 1 June 2015; Japanese Patent 6797693 (HHS Reference E–042–2014–0–JP–09), issued 20 November 2020; South Korean Patent Application 2016–7036828 (HHS Reference E–042–2014–0–KR–10), filed 1 June 2015; Mexican Patent 383150 (HHS Reference E–042–2014–0–MX–11), issued 3 June 2021; New Zealand Patent Application 727167 (HHS Reference E–042–2014–0–NZ–12), filed 1 June 2015; Saudi Arabian Patent 8651 (HHS Reference E–042–2014–0–SA–13), issued 15 September 2021; Singapore Patent 11201609960Q (HHS Reference E–042–2014–0–SG–14), issued 28

September 2021; United States Patent 10,287,350 (HHS Reference E–042–2014–0–US–15), issued 14 May 2019; Hong Kong Patent HK 1234420 (HHS Reference E–042–2014–0–HK–16), issued 4 June 2021; United States Patent 11,236,161 (HHS Reference E–042–2014–0–US–17), issued 1 Februry 2022; New Zealand Patent Application 764530 (HHS Reference E–042–2014–0–NZ–18), filed 19 May 2020; European Patent Application 20197459.9 (HHS Reference E–042–2014–0–EP–25), filed 22 September 2020; Australian Patent Application 2020267211 (HHS Reference E–042–2014–0–AU–26), filed 11 November 2020; Japanese Patent 7004470 (HHS Reference E–042–2014–0–JP–27), issued 6 January 2022; Mexican Patent Application MX/a/2021/006239 (HHS Reference E–042–2014–0–MX–28), filed 27 May 2021; Israeli Patent Application 283423 (HHS Reference E–042–2014–0–IL–29), filed 25 May 2021; Hong Kong Patent Application 42021038427.7 (HHS Reference E–042–2014–0–HK–30), filed 8 September 2021; United States Patent Application 17/557,845 (HHS Reference E–042–2014–0–US–31), filed 21 December 2021; Japanese Patent Application 2021–215427 (HHS Reference E–042–2014–0–JP–32), filed 29 December 2021; United States Patent Application 17/696,249 (HHS Reference E–042–2014–0–US–33), filed 16 March 2022; Israeli Patent Application 291292 (HHS Reference E–042–2014–0–IL–34), filed 13 March 2022, and U.S. and foreign patent applications claiming priority to the aforementioned applications.

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The license to be granted may be worldwide, and may be limited to the following field of use:

''The commercial development, production, and sale of a monospecific chimeric antigen receptor (CAR)-based immunotherapy using T lymphocytes transfected *in vivo* using non-viral, synthetic nanoparticle-based systems comprised of lipids, polymers and/or lipopolymers that deliver a nucleic acid cargo that expresses an anti-CD19 CAR having:

(1) the CDR polypeptide sequences of the anti-CD19 antibody known as Hu19; and

(2) a T cell signaling domain; for the treatment or prevention of CD19-expressing cancers.

The Licensed Field of Use explicitly excludes the development of a bispecific or bicistronic CAR and the use of viral-based nucleic acid systems or vectors to express the CAR.''

CD19 is a cell surface protein that is expressed on a number of types of cancer cells, including various lymphomas and leukemias. Although there are several therapies available for patients with these types of cancers, many pateints still either do not respond to these therapies or experience disease relapse and require additional lines of therapy. As a result, there continues to be an unmet patient need. The development of a new anti-CD19 CAR-based therapy can potentially meet some or all of these needs. As a result, the development of a new therapeutic option targeting CD19-expressing cancers will benefit public health by providing an effective treatment for patients that might otherwise have no options.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 21, 2022.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2022–16056 Filed 7–26–22; 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; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; ALS Expanded Access Program.

Date: August 17, 2022.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: W. Ernest Lyons, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056, *lyonse@ninds.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 20, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–16046 Filed 7–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel NEI Translational Research Program on Therapy for Visual Disorders (R24): Overflow.

Date: August 3, 2022.

Time: 1:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ashley Fortress, Ph.D., Designated Federal Official, Division of Extramural Activities, National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20817, (301) 451–2020, *ashley.fortress@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: July 21, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–16047 Filed 7–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; New Concepts and Early-Stage Research for Recording and Modulation in the Nervous System (R21).

Date: August 25, 2022.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian Hoshaw, Ph.D., Chief, Scientific Review Branch, National Eye Institute, National Institutes of Health, Division of Extramural Research, 6700B Rockledge Drive, Suite 3400, Rockville, MD 20892, (301) 451–2020, *hoshawb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: July 19, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–16048 Filed 7–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0164]

National Boating Safety Advisory Committee; August 2022 Virtual Meeting

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee virtual meeting.

SUMMARY: The National Boating Safety Advisory Committee (Committee) will meet virtually to discuss matters relating to national boating safety. The virtual meeting will be open to the public.

DATES: *Meeting:* The Committee will meet on Tuesday, August 30, 2022 from 1 p.m. until 5 p.m. Eastern Daylight Time (EDT). This virtual meeting may adjourn early if the Committee has completed its business.

Comments and supporting documentation: To ensure your comments are received by Committee members before the virtual meeting, submit your written comments no later than August 23, 2022.

ADDRESSES: To join the virtual meeting or to request special accommodations, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. EDT on August 23, 2022. The number of virtual lines are limited and will be available on a first-come, first served basis.

Pre-registration information: Pre-registration is required for attending virtual meeting. You must request attendance by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. You will receive a response with attendance instructions.

The National Boating Safety Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please call Mr. Jeff Decker at 202–372–1507 or email Mr. Decker at *NBSAC@uscg.mil* as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meeting as time permits, but if you want Committee members to review your comments before the meeting, please submit your comments no later than August 23, 2022. We are particularly interested in comments on the issues in the ''Agenda'' section below. We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number [USCG–2010–0164]. Comments received will be posted without alteration at *https://www.regulations.gov,* including any personal information provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Decker, Alternate Designated Federal Officer of the National Boating Safety Advisory Committee, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593–7509, telephone 202–372–1507 or via email at *NBSAC@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the *Federal Advisory Committee Act,* (5 U.S.C. Appendix). The Committee was established on December 4, 2018, by § 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* (Pub. L. 115–282, 132 Stat. 4192), and is codified in 46 U.S.C. 15105. The

Committee operates under the provisions of the *Federal Advisory Committee Act* (5 U.S.C. Appendix), and 46 U.S.C. 15109. The National Boating Safety Advisory Committee provides advice and recommendations to the Secretary of Homeland Security through the Commandant of the United States Coast Guard on matters relating to national boating safety. This notice is issued under the authority of 46 U.S.C. 15109(a).

Agenda

The agenda for the National Boating Safety Advisory Committee meeting is as follows:

(1) Call to order.
(2) Roll call of Committee members and determination of quorum.
(3) Opening remarks.
(4) Swearing in of new members (tentative).
(5) Conflict of interest statement.
(6) Receipt and discussion of the following reports from the Office of Auxiliary and Boating Safety:
  (a) Presentation/Training on the National Recreational Boating Safety Survey (NRBSS).
  (b) Presentation and discussion on the 2022–2027 National Recreational Boating Strategic Plan.
  (c) 2021 National Recreational Boating Incident Reporting Statistics.
  (d) Recreational Boating Incident Reporting Policy.
  (e) eFoils and JetBoards Update.
  (f) Non-Profit Grant Overview.
(7) Presentation of new Task 2022–01—New technology 33 CFR Subchapter S, parts 181 and 183 to include autonomous vessels.
(8) Presentation of new Task 2022–02—Human Factors.
(9) Presentation of new Task 2022–03—Rental Boats.
(10) Discussion on Subcommittee recommendations.
(11) Committee discussion of boating safety related topics.
(12) Public comment period.
(13) Closing remarks.
(14) Adjournment of meeting.

A copy of all meeting documentation will be available at *https://homeport.uscg.mil/Lists/Content/DispForm.aspx?ID=75937&Source=/Lists/Content/DispForm.aspx?ID=75937* no later than August 23, 2022. Alternatively, you may contact Mr. Jeff Decker as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

There will be a public comment period from approximately 3:45 p.m. until 4 p.m. (EDT). Speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the period allotted, following the last call for comments. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above to register as a speaker.

Dated: July 21, 2022.

Amy M. Beach,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2022–16039 Filed 7–26–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Certain Surgical Gowns

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain surgical gowns. Based upon the facts presented, CBP has concluded in the final determination that the country of origin of the surgical gowns in question is the Dominican Republic for purposes of U.S. Government procurement.

DATES: The final determination was issued on July 21, 2022. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within August 26, 2022.

FOR FURTHER INFORMATION CONTACT: Marie Durané, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0984.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on July 21, 2022, U.S. Customs and Border Protection (CBP) issued a final determination concerning the country of origin of certain surgical gowns (Association for the Advancement of Medical Instrumentation (AAMI) Level 3 and Level 4 sterile disposable surgical gowns) for purposes of Title III of the Trade Agreements Act of 1979. This final determination, HQ H321354, was issued at the request of Global Resources International, Inc. (GRI) and Santé USA, LLC (Santé USA), under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP has concluded that, based upon the facts presented, the country of origin of the surgical gowns is the Dominican Republic for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: July 21, 2022.

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of Trade.

HQ H321354

July 21, 2022

OT:RR:CTF:VS H321354 MJD

CATEGORY: Origin

Lawrence R. Pilon, Rock Trade Law LLC, 134 North LaSalle Street, Suite 1800, Chicago, IL 60602.

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, CBP Regulations; Country of Origin of Surgical Gowns

Dear Mr. Pilon:

This is in response to your request of October 11, 2021, on behalf of your clients, Global Resources International, Inc. (''GRI'') and Santé USA, LLC (''Santé USA''), for a final determination regarding the country of origin of surgical gowns pursuant to Title III of the Trade Agreements Act of 1979 (''TAA''), as amended (19 U.S.C. 2511 *et seq.*), and subpart B of Part 177, U.S. Customs and Border Protection (''CBP'') Regulations (19 CFR 177.21, *et seq.*). GRI and Santé USA are parties-at-interest within the meaning of 19 CFR 177.22(d) and 177.23(a) and are therefore entitled to request this final determination. A meeting was held with counsel for GRI and Santé USA by videoconference on April 12, 2022.

Facts

GRI and Santé USA are manufacturers, importers, exporters, and distributors of medical devices and supplies for the healthcare industry. The subject merchandise consists of the Association for the Advancement of Medical Instrumentation (''AAMI'') Level 3 and Level 4 disposable surgical gowns for use in hospitals, surgical centers, and similar healthcare settings. The surgical gowns are made from nonwoven synthetic spun-melt-spun (''SMS'') textile material and plastic film made in the United States. The SMS textile material forms the exterior of the gown, while the plastic film material is glued to the interior of the gown as reinforcement for the SMS textile material. According to GRI and Santé USA, the SMS

textile material is the most expensive material in the finished product, accounting for 30% of the finished gown's value, and makes up 100% of the gown's exterior. The SMS textile material and plastic film are transferred in rolls to the Dominican Republic where they are cut into component parts, which are in turn assembled into two sleeve subassemblies and the gown body subassembly. The sleeve subassemblies and body gown subassemblies are then returned to the United States for final assembly consisting of principally attaching the sleeve subassemblies to the gown body subassembly and attaching the neck binding to the neck opening of the gown. A more detailed account of the manufacturing process of the surgical gowns is as follows:

United States

- Production of the SMS textile material.
- Manufacture of plastic film.

Dominican Republic

- The SMS textile material and plastic film are cut into the main gown body, sleeve, and reinforcement pieces using electric scissors.
- The SMS textile material is converted to waist ties using a tie-making machine.
- The sleeve cut piece is folded and its seam sealed by a bar heat sealer and ultrasonic welder sewing machine.
- The knit cuff is sewn to the formed sleeve piece using a sewing machine.
- The item number, level of performance claim, and brand information are stamped onto the main gown body piece.
- The hook and loop fastener material is sewn to the gown body using a sewing machine.
- The ties are attached to the gown body subassembly by glue and ultrasonic welding.
- Glue is applied evenly to the plastic film reinforcement piece and applied to the inner face of the gown body subassembly.

United States

- The sleeve subassemblies are attached to the main gown body subassembly with an ultrasonic welder sewing machine.
- The neck binding is attached to the neck opening of the gown using a binding machine.
- Each gown is inspected for visible defects and conformity to required dimensions for size.
- The gowns are also tested for conformity to applicable AAMI Level 3 and Level 4 strength and permeability standards.
- Gowns are packaged and sterilized with ethylene oxide.

GR and Santé USA state that the SMS textile material is classified in heading 5603, Harmonized Tariff Schedule of the United States (''HTSUS''), which provides for ''[n]onwovens, whether or not impregnated, coated, covered or laminated.'' The finished surgical gowns are classified under subheading 6210.10.5010, HTSUSA, which provides for ''[g]arments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Of fabrics of heading 5602 or 5603: Other: Nonwoven disposable apparel designed for use in hospitals, clinics, laboratories or contaminated areas: Surgical or isolation gowns.''

Issue

What is the country of origin of the surgical gowns for purposes of U.S. Government procurement?

Law and Analysis

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 CFR 177.21 *et seq.,* which implements Title III, Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–2518).

The rule of origin set forth in 19 U.S.C. 2518(4)(B) states:

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Acquisition Regulation. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulation restricts the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1). The Federal Acquisition Regulation defines ''U.S.-made end product'' as:

. . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

See 48 CFR 25.003.

The Federal Acquisition Regulation, 48 CFR 25.003 defines ''designated country end product'' as a:

WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least developed country end product, or a Caribbean Basin country end product.

Section 25.003 provides that a ''Free Trade Agreement country end product'' means an article that-

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

''Free Trade Agreement country'' means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore. *See* 48 CFR 25.003. Thus, the Dominican Republic is an FTA country for purposes of the Federal Acquisition Regulation.

The Secretary of the Treasury's authority to issue advisory rulings and final determinations is set forth in 19 U.S.C. 2515(b)(1), which states:

For the purposes of this subchapter, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 2518(4)(B) of this title, *an article is or would be a product of a foreign country or instrumentality designated pursuant to section 2511(b) of this title.*

Emphasis added.

The Secretary of the Treasury's authority mentioned above, along with other customs revenue functions, are delegated to CBP in the Appendix to 19 CFR part 0—Treasury Department Order No. 100–16, 68 FR 28, 322 (May 23, 2003).

With regard to the surgical gowns at issue, GRI and Santé USA's request involves the issue of whether the article is a U.S.-made end product or a product of the Dominican Republic. This determination addresses the latter point, whether the article is a product of the Dominican Republic and not whether the article is a U.S.-made end product. Because the articles at issue are not wholly the growth, product, or manufacture of the Dominican Republic, our analysis must apply the substantial transformation standard, as set forth in 19 U.S.C. 2518(4)(B)(ii).

The information submitted indicates that the surgical gowns are made chiefly from non-woven textile material. GRI and Santé USA also indicate that the goods are classified in subheading 6210.10.50, HTSUS, as an apparel product. The rules of origin for textile and apparel products for purposes of the customs laws and the administration of quantitative restrictions are governed by 19 U.S.C. 3592, unless otherwise provided for by statute. These provisions are implemented in the CBP Regulations at 19 CFR 102.21. Section 3592 has been described as Congress's expression of substantial transformation as it relates to textile and apparel products. Therefore, the country of origin of the surgical gowns for Government procurement purposes is determined by a hierarchy of rules set forth in paragraphs (c)(1) through (c)(5) of Section 102.21.

As the finished surgical gowns are produced by processing in more than one country, their origin cannot be determined by application of the 19 CFR 102.21(c)(1), wholly obtained or produced rule, and resort must be made to 19 CFR 102.21(c)(2). Section 102.21(c)(2) states that the origin of a good is the country ''in which each foreign material incorporated in that good underwent an applicable change in tariff classification,

and/or met any other requirement, specified for the good in paragraph (e) of [102.21].'' Section 102.21(e)(1) provides in pertinent part:

The following rules will apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section:

6210–6212 (1) If the good consists of two or more component parts, a change to an assembled good of heading 6210 through 6212 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

The subject merchandise is classifiable in heading 6210, HTSUS. Section 102.21(b)(6) defines wholly assembled as: ''the term 'wholly assembled' when used with reference to a good means that all components, of which there must be at least two, preexisted in essentially the same condition as found in the finished good and were combined to form the finished good in a single country, territory, or insular possession. Minor attachments and minor embellishments (for example, appliques, beads, spangles, embroidery, buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, pockets), will not affect the status of a good as ''wholly assembled'' in a single country, territory, or insular possession.''

The surgical gowns at issue are assembled in both the Dominican Republic and the United States. Therefore, the surgical gowns are not ''wholly assembled in a single country, territory, or insular possession,'' and as a result, 19 CFR 102.21(c)(2) is inapplicable.

19 CFR 102.21(c)(3) states in pertinent part,

Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) or (2) of this section:

(i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit;

(ii) Except for fabrics of chapter 59 and goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

As the subject surgical gowns are neither knit to shape, nor wholly assembled in a single country, section 102.21(c)(3) is inapplicable.

Section 102.21(c)(4) states, ''Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1), (2) or (3) of this section, the country of origin of the good is the single country, territory or insular possession in which the most important assembly or manufacturing process occurred.''

GRI and Santé USA assert that the most important assembly or manufacturing process is the assembly of the sleeves to the main body piece of the gown in the United States. In support of their argument, they assert that the sleeves and the body are the essential components of the gown and provide the protective surfaces that are the purpose of the finished surgical gowns; attaching the sleeves to the main body of the gown gives the gown its finished shape; and attaching the sleeves to the main body of the gown requires a high degree of skill and is the most time consuming step in manufacturing the gowns. Moreover, GRI and Santé USA argue that 19 CFR 102.21(c)(4) only allows for a single assembly or manufacturing process to be the most important assembly or manufacturing process. We disagree.

The most important assembly or manufacturing processes of the surgical gowns consist of cutting the SMS textile material to make the main body and sleeve pieces, the assembly of the sleeves, the assembly of the gown body, and the application of the plastic film to the inner face of the gown body. All these steps combined create the main pieces of the surgical gown, *i.e.,* the sleeves and the body. They are the parts of the surgical gown that make the surgical gown a surgical gown. As a result, when the sleeve subassemblies and the surgical gown body are exported to the United States, they are clearly recognizable as an unfinished surgical gown. All that is left to do in the United States is to attach the sleeves to the gown and the neck binding to the neck opening of the gown to form the finished surgical gown.

In New York Ruling Letter (''NY'') K88449, dated August 17, 2004, CBP found that the most important assembly processes for a woman's knitted jacket in Version A were sewing the collar to the front of the jacket; assembling the sleeve parts; attaching the cuffs; sewing the side seams; sewing the pockets to the front panels; attaching the bottom band; and sewing the zipper and placket to the garment; all of which occurred in China. The final assembly processes of a woman's knitted jacket, such as attaching the rib knit collar to the back of the jacket and sewing the sleeves to the jacket, that occurred in the Commonwealth of the Northern Mariana Islands, were not determinative of the country of origin. Consequently, while GRI and Santé USA argue that attaching the sleeve subassemblies to the gown body subassembly requires a high degree of skill and time, we find that, in the aggregate, the cutting of the SMS textile material for the gown body subassembly and sleeve subassembly, the assembly of the sleeves, the assembly of the gown body, and applying the plastic film to the inner face of the gown body subassembly are the most important assembly or manufacturing processes in the production of the surgical gowns.

Moreover, CBP has a longstanding practice of interpreting 19 CFR 102.21(c)(4) to include more than one assembly or manufacturing process as the most important assembly or manufacturing process for purposes of a country of origin determination, as we have demonstrated above in NY K88449. *See also* Headquarters Ruling Letter (''HQ'') H308753, dated March 11, 2021; NY N308451, dated January 9, 2020; NY N302230, dated February 8, 2019; NY N174035, dated August 5, 2011; NY N091836, dated February 12, 2010; NY N026921, dated May 2, 2008; NY N033021, dated July 14, 2008; NY N019414, dated December 3, 2007; NY L81685, dated January 31, 2005; NY L87413, dated September 1, 2005; NY L81143, dated December 30, 2004; NY C85697, dated April 23, 1998; HQ 960991, dated December 9, 1997; HQ 960884, dated November 10, 1997; HQ 958668, dated May 15, 1996.

Therefore, we find, in accordance with 19 CFR 102.21(c)(4), the country of origin of the surgical gowns is the Dominican Republic.

Accordingly, the instant surgical gowns would be products of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b)(1). As to whether they qualify as ''U.S.-made end product,'' we encourage GRI and Santé USA to review the court decision in *Acetris Health, LLC* v. *United States,* 949 F.3d 719 (Fed. Cir. 2020), and to consult with the relevant government procuring agency.

Holding

Based on the facts and analysis set forth above, the country of origin of the surgical gowns at issue is the Dominican Republic.

GRI and Santé USA should consult with the relevant government procuring agency to determine whether the surgical gowns qualify as ''U.S.-made end products'' for purposes of the Federal Acquisition Regulation implementing the TAA.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the U.S. Court of International Trade.

Sincerely,

Alice A. Kipel, Executive Director

Regulations and Rulings Office of Trade

[FR Doc. 2022–16073 Filed 7–26–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0016]

Meetings To Implement Pandemic Response Voluntary Agreement Under Section 708 of the Defense Production Act

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Announcement of meetings.

SUMMARY: The Federal Emergency Management Agency (FEMA) is holding quarterly status meetings under each of the six Plans of Action, in the corresponding order listed below, to

implement the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic. They include: Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Gases to Respond to COVID–19; Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Personal Protective Equipment (PPE) to Respond to COVID–19; Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Diagnostic Test Kits and other Testing Components to Respond to COVID–19; Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Devices to Respond to COVID–19; Plan of Action to Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains to Respond to COVID–19; Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Drug Products, Drug Substances, and Associated Medical Devices to Respond to COVID–19.

DATES:

- Thursday, August 18, 2022, from 1:30 p.m. to 2:30 p.m. Eastern Time (ET).
- Thursday, September 15, 2022, from 1:30 p.m. to 2:30 p.m. ET.
- Thursday, September 22, 2022, from 1:30 p.m. to 2:30 p.m. ET.
- Thursday, October 6, 2022, from 1:30 p.m. to 2:30 p.m. ET.
- Thursday, October 13, 2022, from 1:30 p.m. to 2:30 p.m. ET.
- Thursday, October 20, 2022, from 1:30 p.m. to 2:30 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Kathy Hill, Office of Business, Industry, and Infrastructure Integration, via email at *OB3I@fema.dhs.gov* or via phone at (202) 212–1666.

SUPPLEMENTARY INFORMATION: Notice of these meetings is provided as required by section 708(h)(8) of the Defense Production Act (DPA), 50 U.S.C. 4558(h)(8), and consistent with 44 CFR part 332.

The DPA authorizes the making of ''voluntary agreements and plans of action'' with representatives of industry, business, and other interests to help provide for the national defense.[1] The President's authority to facilitate voluntary agreements with respect to responding to the spread of COVID–19 within the United States was delegated to the Secretary of Homeland Security in Executive Order 13911.[2] The Secretary of Homeland Security further delegated this authority to the FEMA Administrator.[3]

On August 17, 2020, after the appropriate consultations with the Attorney General and the Chairman of the Federal Trade Commission, FEMA completed and published in the **Federal Register** a ''Voluntary Agreement, Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic'' (Voluntary Agreement).[4] Unless terminated earlier, the Voluntary Agreement is effective until August 17, 2025, and may be extended subject to additional approval by the Attorney General after consultation with the Chairman of the Federal Trade Commission. The Agreement may be used to prepare for or respond to any pandemic, including COVID–19, during that time.

On December 7, 2020, the first plan of action under the Voluntary Agreement—the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Personal Protective Equipment (PPE) to Respond to COVID–19 (PPE Plan of Action)—was finalized.[5] The PPE Plan of Action established several sub-committees under the Voluntary Agreement, focusing on different aspects of the PPE Plan of Action.

On May 24, 2021, four additional plans of action under the Voluntary Agreement—the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Diagnostic Test Kits and other Testing Components to respond to COVID–19; the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Drug Products, Drug Substances, and Associated Medical Devices to respond to COVID–19; the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Devices to respond to COVID–19; and the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Gases to respond to COVID–19—were finalized.[6] These plans of action established several sub-committees under the Voluntary Agreement, focusing on different aspects of each plan of action.

On October 15, 2021, the sixth plan of action under the Voluntary Agreement—the Plan of Action to Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains to Respond to COVID–19—was finalized.[7] This Plan of Action established several sub-committees under the Voluntary Agreement, focusing on different transportation categories.

The meetings are chaired by the FEMA Administrator's delegates from the Office of Response and Recovery (ORR) and Office of Policy and Program Analysis (OPPA), attended by the Attorney General's delegates from the U.S. Department of Justice, and attended by the Chairman of the Federal Trade Commission's delegates. In implementing the Voluntary Agreement, FEMA adheres to all procedural requirements of 50 U.S.C. 4558 and 44 CFR part 332.

Meeting Objectives: The objectives of the meetings are as follows:

1. Convene the Requirements Sub-Committees under each of the six Plans of Action to establish priorities related to the COVID–19 response under the Voluntary Agreement.
2. Gather Requirements Sub-Committee Participants and Attendees to ask targeted questions for situational awareness.
3. Identify pandemic-related information gaps and areas that merit sharing by holding these regular quarterly meetings of the Requirements Sub-Committees with key stakeholders.
4. Identify potential Objectives and Actions that should be completed under the Requirements Sub-Committees.

Meetings Closed to the Public: By default, the DPA requires meetings held to implement a voluntary agreement or plan of action be open to the public.[8] However, attendance may be limited if the Sponsor[9] of the Voluntary Agreement finds that the matter to be discussed at a meeting falls within the purview of matters described in 5 U.S.C. 552b(c), such as trade secrets and commercial or financial information.

[1] 50 U.S.C. 4558(c)(1).

[2] 85 FR 18403 (Apr. 1, 2020).

[3] DHS Delegation 09052, Rev. 00.1 (Apr. 1, 2020); DHS Delegation Number 09052 Rev. 00 (Jan. 3, 2017).

[4] 85 FR 50035 (Aug. 17, 2020). The Attorney General, in consultation with the Chairman of the Federal Trade Commission, made the required finding that the purpose of the voluntary agreement may not reasonably be achieved through an agreement having less anticompetitive effects or without any voluntary agreement and published the finding in the **Federal Register** on the same day. 85 FR 50049 (Aug. 17, 2020).

[5] *See* 85 FR 78869 (Dec. 7, 2020). *See also* 85 FR 79020 (Dec. 8, 2020).

[6] *See* 86 FR 27894 (May 24, 2021). *See also* 86 FR 28851 (May 28, 2021).

[7] *See* 86 FR 57444 (Oct. 15, 2021). *See also* 87 FR 6880 (Feb. 7, 2022).

[8] *See* 50 U.S.C. 4558(h)(7).

[9] ''[T]he individual designated by the President in subsection (c)(2) [of section 708 of the DPA] to administer the voluntary agreement, or plan of action.'' 50 U.S.C. 4558(h)(7).

The Sponsor of the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic, the FEMA Administrator, found that these meetings to implement the Voluntary Agreement involve matters which fall within the purview of matters described in 5 U.S.C. 552b(c) and the meetings are therefore closed to the public.

Specifically, these meetings may require participants to disclose trade secrets or commercial or financial information that is privileged or confidential. Disclosure of such information allows for meetings to be closed to the public pursuant to 5 U.S.C. 552b(c)(4).

The success of the Voluntary Agreement depends wholly on the willing participation of the private sector participants. Failure to close these meetings to the public could reduce active participation by the signatories due to a perceived risk that sensitive company information could be released to the public. A public disclosure of a private sector participant's information executed prematurely could reduce trust and support for the Voluntary Agreement. A resulting loss of support by the participants for the Voluntary Agreement would significantly hinder the implementation of the Agency's objectives. Thus, these meeting closures are permitted pursuant to 5 U.S.C. 552b(c)(9)(B).

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–16108 Filed 7–26–22; 8:45 am]

BILLING CODE 9111–19–P.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2022–0065; FXIA16710900000–223–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by August 26, 2022.

ADDRESSES: *Obtaining Documents:* The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2022–0065.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2022–0065.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2022–0065; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2185 or via email at *DMAFR@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:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *https://www.regulations.gov,* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, 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.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered

species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: NNNN Operations LLC, San Angelo, TX; Permit No. PER0037184

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for red lechwe (*Kobus leche*), to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Continental Ranch Hunts/Kothman Ranch Co., Sanderson, TX; Permit No. PER0038858

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for Arabian oryx (*Oryx leucoryx*), to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: NNNN Operations, LLC, San Angelo, TX; Permit No. PER0037185

The applicant requests a permit authorizing the culling of excess red lechwe (*Kobus leche*) from the captive herd maintained at their facility, to enhance the species' propagation and survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Continental Ranch Hunts/Kothman Ranch Co., Sanderson, TX; Permit No. PER0038856

The applicant requests a permit authorizing the culling of Arabian oryx (*Oryx leucoryx*) from the captive herd maintained at their facility, to enhance the species' propagation and survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Trophy Applicants

The following applicants request permits to import sport-hunted trophies of male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

Applicant: Rudy Nix, Barksdale, TX; Permit No. 74969C

Applicant: Christopher O'Connor, Dumfries, VA; Permit No. 55019C

Applicant: Phillip Landry, Leesville, CA; Permit No. 76127C

Applicant: Terry Anderson, Bozeman, MT; Permit No. 52689C

Applicant: Scott Roleson, Whiting, NJ; Permit No. 54410C

Applicant: Daniel Meyer, Cypress, TX; Permit No. 26444D

Applicant: John Sholes, Gaithersburg, MD; Permit No. 11591D

Applicant: Mark Pirkle, Blanket, TX; Permit No. 76772C

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to *regulations.gov* and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Brenda Tapia,

Supervisory Program Analyst/Data Administrator Branch of Permits, Division of Management Authority.

[FR Doc. 2022–16105 Filed 7–26–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2022–0095; FXES11130400000–223–FF04EF4000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink and Blue-Tailed Mole Skink; Osceola 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 DR Horton (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink and blue-tailed mole skink incidental to the construction and operation of a residential development in Osceola 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 26, 2022.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2022–0095 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–2022–0095.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2022–0095; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Alfredo Begazo, by U.S. mail (see **ADDRESSES**), or via phone at 772–469–4234. 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, announce receipt of an application from DR Horton 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*) and blue-tailed mole-skink (*Eumeces egregius lividus*) (skinks) incidental to the construction of a residential development in Osceola 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 skinks through the conversion of approximately 11.4 acres (ac) of occupied breeding, foraging, and sheltering skink habitat incidental to the construction of a residential development on a 58.8-ac parcel in Section 22; Township 25 South; Range 27 East; Osceola County, Florida. The applicant proposes to mitigate for take of the skinks by purchasing credits equivalent to 22.8 ac of skink-occupied habitat from a Service-approved conservation bank. The Service would require the applicant to purchase the credits prior to engaging in any phase of the project.

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 the construction of single-family homes, paved roads, green areas, storm water ponds, and associated infrastructure (*e.g.,* electric, water, and sewer lines) would individually and cumulatively have a minor or negligible effect on the skinks 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 PER0015099 to DR Horton.

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. 2022–16051 Filed 7–26–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2022–0101; FXIA16710900000–223–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by August 26, 2022.

ADDRESSES: *Obtaining Documents:* The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2022–0101.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2022–0101.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2022–0101; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2185 or via email at *DMAFR@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:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and

analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *https://www.regulations.gov,* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, 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.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: Southwest Fisheries Science Center, La Jolla, CA; Permit No. PER0045231

The applicant requests reissuance of the permit to import biological samples collected from wild and captive-bred animals of Kemp's ridley sea turtle (*Lepidochelys kempii*), hawksbill sea turtle (*Eretmochelys imbricata*), leatherback sea turtle (*Dermochelys coriacea*), green sea turtle (*Chelonia mydas*), loggerhead sea turtle (*Caretta caretta*), olive ridley sea turtle (*Lepidochelys olivacea*), and flatback sea turtle (*Natator depressus*), for the purpose of scientific research. This notification covers activities conducted by the applicant over a 5-year period.

Applicant: University of North Florida, Jacksonville, FL; Permit No. PER0046159

The applicant requests a permit to import biological samples collected from wild American crocodiles (*Crocodylus acutus*) in the Dominican Republic for the purpose of scientific research. This notification is for a single import.

Applicant: U.S. Fish and Wildlife Service; Office of Law Enforcement; Permit No. PER0047511

The applicant requests a permit to import specimens from elephants (*Elephantidae*) from Germany for law enforcement purposes. This notification is for a single import.

Applicant: Idaho Falls Zoo at Tautphaus Park, Idaho Falls, ID; Permit No. PER0045412

The applicant requests a permit to export one captive-bred female Japanese crane (*Grus japonensis*) from the Idaho Falls Zoo at Tautphaus Park, Idaho Falls, ID, to the Assiniboine Park Zoo, Winnipeg, Manitoba, Canada, for the purpose of enhancing the propagation or survival of the species. This notification is for a single export.

Applicant: Cheyenne Mountain Zoo, Colorado Springs, CO; Permit No. PER0046199

The applicant requests a permit to import one captive-bred female Amur tiger (*Panthera tigris altaica*) from the Toronto Zoo, Toronto, Ontario, Canada, to the Cheyenne Mountain Zoo, Colorado Springs, CO, for the purpose of enhancing the propagation or survival of the species. This notification is for a single import.

Applicant: American Museum of Natural History, New York, NY; Permit No. PER0045505

The applicant requests the renewal of their permit to export and reimport nonliving museum specimens of endangered and threatened species previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Trophy Applicants

The following applicants request permits to import sport-hunted trophies of male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

Applicant: Christian Rothermel, Mohnton, PA; Permit No. 54295C

Applicant: Ernest Dosio, Lodi, CA; Permit No. 62557C

Applicant: Jon Jacobs, Pasco, WA; Permit No. PER0045915

Applicant: Abraham Garza, Missouri City, TX; Permit No. 59526D

Applicant: Lesley Hathaway, Portland, IN; Permit No. 02625D

Applicant: Roy Potts, Wisdom, MT; Permit No. 62604C

Applicant: Loyd Keith, Madison, TN; Permit No. 60450D

Applicant: Carolyn Kimbro, Smyrna, GA; Permit No. 77185C

Applicant: David Gocken, Mound City, MO; Permit No. PER0047119

Applicant: William Stroud, Dallas, TX; Permit No. 62051D

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to *https://www.regulations.gov* and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Brenda Tapia,

Supervisory Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2022–16110 Filed 7–26–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVB02000.L51010000.ER0000. LVRWF2108090.21X; N–100223 MO#4500163137]

Notice of Segregation of Public Land for the Esmeralda Solar Projects, Esmeralda County, Nevada

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of segregation.

SUMMARY: Through this notice the Bureau of Land Management (BLM) is segregating public lands included in seven (7) rights-of-way applications for the Leeward Esmeralda Renewable Energy, Connect Gen Smoky Valley, Arevia Gold Dust, Invenergy Nivloc, NextEra Esmeralda Energy Center, Red Ridge 1, and Red Ridge 2 Solar Energy Projects, from appropriation under the public land laws, including the Mining Law, but not the Mineral Leasing or Material Sales Acts, for a period of two (2) years from the date of publication of this notice, subject to valid existing rights. This segregation is to allow for the orderly administration of the public lands to facilitate consideration of development of renewable energy resources. The public lands segregated by this notice total 118,630.90 acres.

DATES: This segregation for the lands identified in this notice is effective on July 27, 2022.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to the mailing list, send requests to: Perry B. Wickham, Field Manager, at telephone (775) 482–7801; address P.O. Box 911, 1553 S Main Street, Tonopah, NV 89049 or email *pwickham@blm.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: Regulations found at 43 CFR 2091.3–1(e) and 43 CFR 2804.25(f) allow the BLM to temporarily segregate public lands within a right-of-way application area for solar energy development from the operation of the public land laws, including the Mining Law, by publication of a **Federal Register** notice. The BLM uses this temporary segregation authority to preserve its ability to approve, approve with modifications, or deny proposed rights-of-way, and to facilitate the orderly administration of the public lands. This temporary segregation is subject to valid existing rights, including existing mining claims located before this segregation notice. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact lands identified in this notice may be allowed with the approval of an authorized officer of the BLM during the segregation period. The lands segregated under this notice are legally described as follows:

Mount Diablo Meridian, Nevada

T. 1 N., R. 37 E.,
secs. 1 thru 5 and secs. 8 thru 16, unsurveyed;
sec. 21, unsurveyed;
sec. 22, partly unsurveyed, excepting M.S. No. 4895;
secs. 23 thru 26, unsurveyed;
sec. 27, partly unsurveyed, excepting M.S. No. 4895;
secs. 35 and 36, unsurveyed.
T. 2 N., R. 37 E.,
secs. 23 thru 26;
sec. 32, S½ NE¼, W½, and SE¼;
sec. 33, W½ and SE¼;
secs. 34 thru 36.
Tps. 1 and 2 N., R. 38 E., unsurveyed.
T. 1 N., R. 38 ½ E.,
secs. 4 thru 9 and secs. 16 thru 19, unsurveyed.
T. 2 N., R. 38 ½ E., unsurveyed.
T. 2 N., R. 39 E.,
secs. 2 thru 10, unsurveyed;
secs. 11 and 14, partly unsurveyed, excepting M.S. No. 2126 and M.S. No. 2135;
secs. 15 thru 22 and secs. 28 thru 31, unsurveyed.
T. 1 S., R. 38 E.,
secs. 1 thru 16 and sec. 24.
T. 1 S., R. 39 E.,
secs. 3 thru 10 and secs. 15 thru 22.

The area described contains 118,630.90 acres, according to the official plats of the surveys and protraction diagrams on file with the BLM.

As provided in the regulations, the segregation of lands in this notice will not exceed 2-years from the date of publication unless extended for an additional 2-years through publication of a new notice in the **Federal Register**. The segregation period will terminate and the land will automatically reopen to appropriation under the public land laws, including the mining laws, at the earliest of the following dates: upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the applications for rights-of-way; without further administrative action at the end of the segregation provided for in the **Federal Register** notice initiating the segregation; or upon publication of a **Federal Register** notice terminating the segregation.

Upon termination of the segregation of these lands, all lands subject to this segregation would automatically reopen to appropriation under the public land laws, including the mining laws.

Authority: 43 CFR 2091.3–1(e) and 43 CFR 2804.25(f).

Jonah Blustain,

Field Manager, Tonopah Field Office (Acting).

[FR Doc. 2022–16064 Filed 7–26–22; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKRO–ANIA–DENA–CAKR–LACL–KOVA–WRST–GAAR–34005; PPAKAKROR4; PPMPRLE1Y.LS0000]

Public Meetings of the National Park Service Alaska Region Subsistence Resource Commission Program

AGENCY: National Park Service, Interior.

ACTION: Notice of public meeting.

SUMMARY: The National Park Service (NPS) is hereby giving notice that the Aniakchak National Monument Subsistence Resource Commission (SRC), the Denali National Park SRC, the Cape Krusenstern National Monument SRC, the Lake Clark National Park SRC, the Kobuk Valley National Park SRC, the Wrangell-St. Elias National Park SRC, and the Gates of the Arctic National Park SRC will meet as indicated below.

DATES: The Aniakchak National Monument SRC will meet in-person and via teleconference from 1:00 p.m. to 5:00 p.m. or until business is completed on Thursday, September 29, 2022. The alternate meeting date is Wednesday, October 5, 2022, from 1:00 p.m. to 5:00 p.m. or until business is completed at the same location in person and via teleconference. If an in-person meeting is not feasible or advisable, the meeting will be held solely by teleconference.

The Denali National Park SRC will meet in-person and via teleconference from 10:00 a.m. to 5:00 p.m. or until business is completed on Wednesday, August 24, 2022. The alternate meeting date is Tuesday, August 30, 2022, from 10:00 a.m. to 5:00 p.m. or until business is completed via teleconference only. If an in-person meeting is not feasible or advisable, the meeting will be held solely by teleconference.

The Cape Krusenstern National Monument SRC will meet in-person and

via teleconference from 1:00 p.m. to 5:00 p.m. on Tuesday, October 25, 2022, and from 9:00 a.m. to 12:00 p.m. or until business is completed on Wednesday, October 26, 2022. The alternate meeting dates are Tuesday, November 8, 2022, from 1:00 p.m. to 5:00 p.m., and Wednesday, November 9, 2022, from 9:00 a.m. to 12:00 p.m. or until business is completed at the same location in-person and via teleconference. If an in-person meeting is not feasible or advisable, the meeting will be held solely by teleconference.

The Lake Clark National Park SRC will meet in-person and via teleconference from 1:00 p.m. to 4:00 p.m. or until business is completed on Wednesday, September 28, 2022. The alternate meeting date is Wednesday, October 5, 2022, from 1:00 p.m. to 4:00 p.m. or until business is completed at the same location in-person and via teleconference. If an in-person meeting is not feasible or advisable, the meeting will be held solely by teleconference.

The Kobuk Valley National Park SRC will meet in-person and via teleconference from 1:00 p.m. to 5:00 p.m. on Wednesday, October 26, 2022, and from 9:00 a.m. to 12:00 p.m. on Thursday, October 27, 2022, or until business is completed. The alternate meeting dates are Thursday, November 10, 2022, from 1:00 p.m. to 5:00 p.m., and Friday, November 11, 2022, from 9:00 a.m. to 12:00 p.m. or until business is completed at the same location in-person and via teleconference. If an in-person meeting is not feasible or advisable, the meeting will be held solely by teleconference.

The Wrangell-St. Elias National Park SRC will meet in-person and via teleconference from 9:00 a.m. to 5:00 p.m. or until business is completed on both Wednesday, September 28, 2022, and Thursday, September 29, 2022. If business is completed on September 28, 2022, the meeting will adjourn, and no meeting will take place on September 29, 2022. The alternate meeting dates are Monday, October 3, 2022, and Tuesday, October 4, 2022, from 9:00 a.m. to 5:00 p.m., or until business is completed at the same location in person and via teleconference. If an in-person meeting is not feasible or advisable, the meeting will be held solely by teleconference.

The Gates of the Arctic National Park SRC will meet in-person and via teleconference from 9:00 a.m. to 5:00 p.m. or until business is completed on both Wednesday, November 9, 2022, and Thursday, November 10, 2022. The alternate meeting dates are Wednesday, November 16, 2022, from 9:00 a.m. to 5:00 p.m., and Thursday, November 17, 2022, from 9:00 a.m. to 5:00 p.m. or until business is completed at the same location in-person and via teleconference. If an in-person meeting is not feasible or advisable, all meetings will be held solely via teleconference.

ADDRESSES: The Aniakchak National Monument SRC will meet at the Katmai National Park Office, 1001 Silver Street, King Salmon AK 99613 in person and via teleconference. Teleconference participants must call the NPS office at (907) 246–2121 prior to the meeting to receive teleconference passcode information. For more detailed information regarding these meetings, or if you are interested in applying for SRC membership, contact Designated Federal Officer Mark Sturm, Superintendent, at (907) 246–2120 or via email at *mark_sturm@nps.gov,* or Troy Hamon, Subsistence Coordinator, at (907) 246–2121 or via email at *troy_hamon@nps.gov,* or Eva Patton, Federal Advisory Committee Group Federal Officer, at (907) 644–3601 or via email at *eva_patton@nps.gov.*

The Denali National Park SRC will meet in-person and via teleconference at the Totem Inn conference room at Mile 248.7 Parks Highway, Healy AK 99743. Teleconference participants must call the NPS office at (907) 644–3604 prior to the meeting to receive teleconference passcode information. For more detailed information regarding these meetings, or if you are interested in applying for SRC membership, contact Designated Federal Officer Brooke Merrell, Acting Superintendent, at (907) 683–9627 or via email at *brooke_merrell@nps.gov,* or Amy Craver, Subsistence Coordinator, at (907) 644–3604 or via email at *amy_craver@nps.gov,* or Eva Patton, Federal Advisory Committee Group Federal Officer, at (907) 644–3601 or via email at *eva_patton@nps.gov.*

The Cape Krusenstern National Monument SRC will meet in-person and via teleconference at the Northwest Arctic Heritage Center, 171 3rd Avenue, Kotzebue, AK 99752. Teleconference participants must call the NPS office at (907) 442–8342 prior to the meeting to receive teleconference passcode information. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Officer Ray McPadden, Superintendent, at (907) 442–3890 or via email at *raymond_mcpadden@nps.gov,* or Hannah Atkinson, Cultural Anthropologist, at (907) 442–8342 or via email at *hannah_atkinson@nps.gov,* or Eva Patton, Federal Advisory Committee Group Federal Officer, at (907) 644–3601 or via email at *eva_patton@nps.gov.*

The Lake Clark National Park SRC will meet in-person and via teleconference at the Nondalton Community Center, 109 Main Street, Nondalton, AK 99640. Teleconference participants must call the NPS office at (907) 644–3648 prior to the meeting to receive teleconference passcode information. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Officer Susanne Green, Superintendent, at (907) 644–3627 or via email at *susanne_green@nps.gov,* or Liza Rupp, Subsistence Manager, at (907) 644–3648 or via email at *elizabeth_rupp@nps.gov,* or Eva Patton, Federal Advisory Committee Group Federal Officer, at (907) 644–3601 or via email at *eva_patton@nps.gov.*

The Kobuk Valley National Park SRC will meet in-person and via teleconference at the Northwest Arctic Heritage Center, 171 3rd Avenue, Kotzebue, AK 99752. Teleconference participants must call the NPS office at (907) 442–8342 prior to the meeting to receive teleconference passcode information. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Officer Ray McPadden, Superintendent, at (907) 442–3890 or via email at *raymond_mcpadden@nps.gov,* or Hannah Atkinson, Cultural Anthropologist, at (907) 442–8342 or via email at *hannah_atkinson@nps.gov,* or Eva Patton, Federal Advisory Committee Group Federal Officer, at (907) 644–3601 or via email at *eva_patton@nps.gov.*

The Wrangell-St. Elias National Park SRC will meet in-person and via teleconference at the Copper Center Visitor Center Complex, Wrangell-St. Elias National Park and Preserve, Mile 106.8 Richardson Highway, Copper Center, AK 99573. Teleconference participants must contact Subsistence Coordinator Barbara Cellarius at (907) 822–7236 or *wrst_subsistence@nps.gov* prior to the meeting to receive teleconference passcode information. For more detailed information regarding these meetings, or if you are interested in applying for SRC membership, contact Designated Federal Officer Ben Bobowski, Superintendent, at (907) 822–5234 or via email at *ben_bobowski@nps.gov,* or Barbara Cellarius, Subsistence Coordinator, at (907) 822–7236 or via email at *barbara_cellarius@nps.gov,* or Eva Patton, Federal Advisory Committee Group Federal Officer, at

(907) 644–3601 or via email at *eva_patton@nps.gov.*

The Gates of the Arctic National Park SRC will meet in-person and via teleconference at the Sophie Station Hotel, Zach's Boardroom, 1717 University Avenue, Fairbanks, AK 99709. Teleconference participants must call the NPS office at (907) 455–0639 prior to the meeting to receive teleconference passcode information. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Officer Mark Dowdle, Superintendent, at (907) 455–0614 or via email at *mark_dowdle@nps.gov,* or Marcy Okada, Subsistence Coordinator, at (907) 455–0639 or via email at *marcy_okada@nps.gov,* or Eva Patton, Federal Advisory Committee Group Federal Officer, at (907) 644–3601 or via email at *eva_patton@nps.gov.*

SUPPLEMENTARY INFORMATION: The NPS is holding meetings pursuant to the Federal Advisory Committee Act (5 U.S.C. appendix 1–16). The NPS SRC program is authorized under title VIII, section 808 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3118).

SRC meetings are open to the public and will have time allocated for public testimony.

The public is welcome to present written or oral comments to the SRC. SRC meetings will be recorded and meeting minutes will be available upon request from the Superintendent for public inspection approximately six weeks after the meeting.

Meeting Accessibility/Special Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the (see **FOR FURTHER INFORMATION CONTACT**) section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis. 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.

Purpose of the Meeting: The agenda may change to accommodate SRC business. The proposed meeting agenda for each meeting includes the following:

1. Call to Order—Confirm Quorum
2. Welcome and Introduction
3. Review and Adoption of Agenda
4. Approval of Minutes
5. Superintendent's Welcome and Review of the SRC Purpose
6. SRC Membership Status
7. SRC Chair and Members' Reports
8. Superintendent's Report
9. Old Business
10. New Business
11. Federal Subsistence Board Update
12. Alaska Boards of Fish and Game Update
13. National Park Service Staff Reports
    a. Superintendent/Ranger Reports
    b. Resource Manager's Report
    c. Subsistence Manager's Report
14. Public and Other Agency Comments
15. Work Session
16. Set Tentative Date and Location for Next SRC Meeting
17. Adjourn Meeting.

SRC meeting location and date may change based on inclement weather or exceptional circumstances, including public health advisories or mandates. If the meeting date and location are changed, the Superintendent will issue a press release and use local newspapers and/or radio stations to announce the rescheduled meeting.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. appendix 2.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2022–16092 Filed 7–26–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCR–CHOH–34006; PPNCCHOHS0–PPMPSPD1Z.YM0000]

Public Meeting of the Chesapeake and Ohio Canal National Historical Park Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the National Park Service (NPS) is hereby giving notice that the Chesapeake and Ohio Canal National Historical Park Commission (Commission) will meet as indicated below.

DATES: The in-person meeting will take place on Thursday, August 11, 2022 with a virtual participation option. The meeting will begin at 9:00 a.m. until 2:30 p.m. (EASTERN).

ADDRESSES: The meeting will be held in the public conference room at park headquarters, Chesapeake and Ohio Canal National Historical Park, 142 W Potomac Street, Williamsport MD 21795. Individuals that prefer to participate virtually must contact the person listed in the [see **FOR FURTHER INFORMATION CONTACT**] at least five (5) business days prior to the meeting. The format and/or location of the meeting are subject to change depending on local health restrictions or mandates. For updated information please see *https://www.nps.gov/choh/learn/news/federal-advisory-commission.htm* or email *choh_information@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Tina Cappetta, Superintendent, Chesapeake and Ohio Canal National Historical Park, 142 W Potomac Street, Williamsport, MD 21795, or via telephone at (301) 714–2201, or by email *tina_cappetta@nps.gov.*

SUPPLEMENTARY INFORMATION: The Commission was established on January 8, 1971, under 16 U.S.C. 410y–4, as amended, and is regulated by the Federal Advisory Committee Act. Appendix D, Division B, Title I, Section 134 of Public Law 106–554, December 21, 2000, and Section 1 of Public Law 113–178, September 26, 2014, respectively.

Purpose of the Meeting: The agenda will include discussion of park updates and outline goals for Fiscal Year 2022/23 and beyond. The final agenda will be posted on the Park's website at *https://www.nps.gov/choh/learn/news/federal-advisory-commission.htm.* The website includes meeting minutes from all prior meetings.

Interested persons may present, either orally or through written comments, information for the Commission to consider during the public meeting. Written comments will also be accepted prior to, during, or after the meeting.

Members of the public may submit written comments by mailing them to Mackensie Henn, Assistant to the Superintendent, Chesapeake and Ohio Canal National Historical Park, 142 W Potomac Street, Williamsport, MD 21795, (240) 520–3135, or by email *choh_information@nps.gov.* Comments

sent via email should include Comments for August 2022 Advisory Commission Meeting in the subject line. All written comments will be provided to members of the Commission.

Depending on the number of people wishing to comment and the time available, the amount of time for oral comments may be limited. All comments will be made part of the public record and will be electronically distributed to all Commission members. Detailed minutes of the meeting will be available for public inspection within 90 days of the meeting.

Meeting Accessibility/Special Accommodations: The meeting is open to the public. Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the (see **FOR FURTHER INFORMATION CONTACT**) section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

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.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your written comments, you should be aware that your entire comment including your personal identifying information will be made publicly available. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. appendix 2.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2022–16091 Filed 7–26–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. U.S.-Korea FTA–103–033]

Certain Fabrics of Triacetate Filament Yarns: Effect of Modification to U.S.-Korea FTA Rules of Origin

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and notice of opportunity to provide written comments.

SUMMARY: Following receipt on July 5, 2022, of a request from the U.S. Trade Representative (USTR), under authority delegated by the President and pursuant to section 104(1) of the U.S.-Korea Free Trade Agreement Implementation Act (the Act), the U.S. International Trade Commission (Commission) instituted investigation No. U.S.-Korea FTA–103–033, *Certain Fabrics of Triacetate Filament Yarns: Effect of Modification to U.S.-Korea FTA Rules of Origin,* for the purpose of providing advice on a modification to the U.S.-Korea Free Trade Agreement (KORUS) rules of origin for certain fabrics.

DATES: August 26, 2022: Deadline for filing written submissions. November 4, 2022: Transmittal of Commission report to USTR.

ADDRESSES: All Commission offices are in the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Due to the COVID 19 pandemic, the Commission's building is currently closed to the public. Once the building reopens, persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Project Leader Katherine Stubblefield (202–205–2522 or *katherine.stubblefield@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact Brian Allen (202–205–3034 or *brian.allen@usitc.gov*) or William Gearhart (202–205–3091 or *william.gearhart@usitc.gov*) of the Commission's Office of the General Counsel. The media should contact Jennifer Andberg, Office of External Relations (*jennifer.andberg@usitc.gov* or 202–205–1819).

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* General information concerning the Commission may be obtained by accessing its internet address (*https://www.usitc.gov*). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Background: In her request letter (received July 5, 2022), the USTR stated that the United States and Korea have recently reached preliminary agreement on a proposed modification to the KORUS rules of origin for certain fabrics. The USTR stated that section 202(o)(2)(B)(i) of the Act authorizes the President, subject to the consultation and layover requirements of section 104 of the Act, to proclaim such modifications to the rules or origin for textiles and apparel goods as are necessary to implement an agreement with Korea pursuant to Article 4.2.5 of the U.S.-Korea FTA. The USTR also stated that one of the requirements set out in section 104(1) of the Act is that the President obtain advice regarding the proposed action from the Commission.

In the request letter, the USTR asked that the Commission provide advice on the probable economic effect of the rules of origin modification on U.S. trade under KORUS, total U.S. trade, and domestic producers of the affected articles. She further requested that the Commission provide its advice at the earliest possible date but no later than four months from receipt of the request, and that it issue as soon as possible thereafter, a public version of its report with any confidential business information redacted.

The proposed modification to the KORUS rules of origin covers certain fabrics of heading 5408 made from textured and non-textured triacetate filament yarns of subheading 5403.33. The request letter and the proposed modification are available on the Commission's website at *https://www.usitc.gov.* As requested, the Commission will provide its advice to USTR no later than four months from receiving the request letter (or by November 4, 2022).

Written Submissions: No public hearing is planned. However, interested parties are invited to file written submissions. All written submissions should be addressed to the Secretary, and should be received no later than 5:15 p.m., August 26, 2022. All written submissions must conform to the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), as temporarily amended by 85 FR 15798 (March 19, 2020). Under that rule waiver, the Office of the Secretary will accept only electronic filings at this time. Filings must be made through the

Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802), or consult the Commission's Handbook on Filing Procedures.

Confidential Business Information: Any submissions that contain confidential business information (CBI) must also conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the CBI is clearly identified by means of brackets. All written submissions, except for CBI, will be made available for inspection by interested parties.

The Commission may include some or all of the CBI submitted in the course of the investigation in the report it sends to USTR. In addition, all information, including CBI, submitted in this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel for cybersecurity purposes. The Commission will not otherwise disclose any CBI in a manner that would reveal the operations of the firm supplying the information.

Summaries of Written Submissions: The Commission intends to publish summaries of the positions of interested persons in an appendix to its report. Persons wishing to have a summary of their position included in the report should include a summary with their written submission on or before August 26, 2022, and should mark the summary as having been provided for that purpose. The summary should be clearly marked as ''summary for inclusion in the report'' at the top of the page. The summary may not exceed 500 words and should not include any CBI. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. The Commission will list the name of the organization furnishing the summary and will include a link to the Commission's Electronic Document Information System (EDIS) where the written submission can be found.

By order of the Commission.

Issued: July 21, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–16049 Filed 7–26–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Soft Projectile Launching Devices, Components Thereof, Ammunition, and Products Containing Same, DN 3629;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Katherine M. Hiner, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov*. For help accessing EDIS, please email *EDIS3Help@usitc.gov*. General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Hasbro, Inc. and Spin Master, Inc. on July 21, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain soft projectile launching devices, components thereof, ammunition, and products containing same. The complainant names as respondents: Shenzhen Yi Jin Electronics Science of China; Guangdong Yu Lee Technology Corporation of China; Yu Lee Company Ltd. of Hong Kong; Gel Blaster, Inc. f/k/a Gel Blaster, LLC of Austin, TX; S-Beam Precision Products Ltd. of China; Splat-R-Ball, LLC of Rogers, AR; Daisy Manufacturing Company of Rogers, AR; Prime Time Toys Ltd. of Hong Kong; Easebon Services Ltd. of Hong Kong; and Prime Time Toys LLC of Pompton Lakes, NJ. The complainant requests that the Commission issue limited exclusion order and cease and desist orders and impose a bond upon respondents alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3629'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov*.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: July 21, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–16050 Filed 7–26–22; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; State Training Provider Eligibility Collection

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL), Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''State Training Provider Eligibility Collection.'' This comment request is part of continuing DOL's efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by September 26, 2022.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Sean Fox by telephone at 202–693–2946 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *fox.sean@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, 200 Constitution Avenue NW, Washington, DC 20210; by email: *fox.sean@dol.gov;* or by Fax at 202–693–3817.

FOR FURTHER INFORMATION CONTACT: Sean Fox by telephone 202–693–2946 (this is not a toll-free number) or by email at *fox.sean@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

This ICR collects the required information for Training Provider Eligibility Collection, which is determined by the State. At a minimum, the information to be collected enables the State to comply with regulations under 20 CFR 680 and the Workforce Innovation and Opportunity Act.

In June 2016, OMB approved the ICR under OMB control number 1205–0523. This ICR allows the DOL to collect information from States pertaining to Eligible Training Provider List and to retain that data. OMB granted approval for the ICR through September of 2019, and again through October of 2022. The Workforce Innovation and Opportunity Act authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive

consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0523.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Type of Review: Extension without changes.

Title of Collection: State Training Provider Eligibility Collection.

Form: N/A.

OMB Control Number: 1205–0523.

Affected Public: State governments.

Estimated Number of Respondents: 12,337.

Frequency: Annually.

Total Estimated Annual Responses: 12,337.

Estimated Average Time per Response: 6 hours.

Estimated Total Annual Burden Hours: 8,912 hours.

Total Estimated Annual Other Cost Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Brent Parton,

Acting Assistant Secretary for Employment and Training.

[FR Doc. 2022–16079 Filed 7–26–22; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–22–0015; NARA–2022–057]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by September 12, 2022.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: *https://www.regulations.gov/docket/NARA-22-0015/document.* This is a direct link to the schedules posted in the docket for this notice on *regulations.gov*. You may submit comments by the following method:

- *Federal eRulemaking Portal: https://www.regulations.gov.* On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on *regulations.gov* and on submitting comments, see their FAQs at *https://www.regulations.gov/faq.*

If you are unable to comment via *regulations.gov*, you may email us at *request.schedule@nara.gov* for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Kimberly Richardson, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov* or by phone at 301–837–1799. For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule.

We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket, unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have

to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of the Army, Agency-wide, Joint Analytic Real-Time Virtual Information Sharing System (DAA–AU–2018–0025).

2. Department of Commerce, National Oceanic and Atmospheric Administration, Office of Coast Survey Coast Pilot Volumes (DAA–0370–2021–0003).

3. Department of Defense, Defense Logistics Agency, Administrative Management, General Counsel, and Legislative Affairs Records (DAA–0361–2021–0015).

4. Department of Defense, Defense Logistics Agency, Plans, Operations and Intelligence Records (DAA–0361–2021–0018).

5. Department of Defense, Defense Logistics Agency, Law Enforcement Support Office Records (DAA–0361–2022–0001).

6. Department of Defense, Office of the Secretary of Defense, Armed Forces DNA Identification Laboratory Files (DAA–0330–2022–0007).

7. Department of Health and Human Services, Administration for Children and Families, Office of Planning, Research and Evaluation Studies and Reports (DAA–0292–2020–0005).

8. Department of Homeland Security, U.S. Secret Service, Incident-Activated Media Records (DAA–0087–2022–0001).

9. Department of Labor, Wage and Hour Division, Mission Records (DAA–0155–2022–0001).

10. Department of State, Office of Fine Arts, Consolidated Schedule (DAA–0059–2020–0014).

11. Department of Transportation, Federal Aviation Administration, Manned and Unmanned Aircraft Accident-Incident Reporting and Declaration of Compliance Records (DAA–0237–2021–0015).

12. Administrative Office of the United States Courts, United States Bankruptcy Courts, Records of Hearings (DAA–0578–2022–0001).

13. National Science Foundation, Office of Polar Programs, Office of Polar Programs Records (DAA–0307–2020–0002).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2022–15859 Filed 7–26–22; 8:45 am]

BILLING CODE 7515–01–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Designation of Six Areas as High Intensity Drug Trafficking Areas

AGENCY: Office of National Drug Control Policy (ONDCP).

ACTION: Notice of six High Intensity Drug Trafficking Areas (HIDTA) designations.

SUMMARY: The Director of the Office of National Drug Control Policy designated six additional areas as High Intensity Drug Trafficking Areas (HIDTA). See **SUPPLEMENTARY INFORMATION** for locations.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice should be directed to Shannon Kelly, National HIDTA Director, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503; (202) 841–5240.

SUPPLEMENTARY INFORMATION: The new areas are (1) Butte County in California as part of the Central Valley California HIDTA; (2) Vigo County in Indiana as part of the Indiana HIDTA; (3) Cumberland and Salem Counties in New Jersey as part of the Liberty Mid-Atlantic HIDTA; (4) Schenectady County in New York as part of the New York/New Jersey HIDTA; and (5) Lawrence County in Pennsylvania as part of the Ohio HIDTA.

Authority: 21 U.S.C. 1706(b)(1).

Dated: July 22, 2022.

Robert Kent,

General Counsel.

[FR Doc. 2022–16095 Filed 7–26–22; 8:45 am]

BILLING CODE 3280–F5–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's (NSB) Committee on Science and Engineering Policy hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Wednesday, August 3, 2022, from 11:00 a.m.–12:00 p.m. EDT.

PLACE: This meeting will be held by video conference through the National Science Foundation.

STATUS: Open.

MATTERS TO BE CONSIDERED: The agenda is: Committee Chair's opening remarks; Update on Indicators 2024 cycle; America's DataHub presentation and discussion; discussion of policy topics under consideration by the committee, including international STEM talent and expanding representation of low-socioeconomic status individuals in STEM.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: (Chris Blair, *cblair@nsf.gov*), 703/292–7000. Members of the public can observe this meeting through a You Tube livestream. Access the livestream at *https://youtu.be/BCBIhzZSbaE.*

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2022–16189 Filed 7–25–22; 4:15 pm]

BILLING CODE 7555–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Rollover Election (RI 38–117), Rollover Information (RI 38–118) and Special Tax Notice Regarding Rollovers (RI 37–22)

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an expiring information collection request (ICR) with minor edits, Rollover Election (RI 38–117), Rollover Information (RI 38–118), and Special Tax Notice Regarding Rollovers (RI 37–22).

DATES: Comments are encouraged and will be accepted until August 26, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *http://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: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0212) was previously published in the **Federal Register** on January 12, 2022 at 87 FR 1793, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 38–117, Rollover Election, is used to collect information from each payee affected by a change in the tax code so that OPM can make payment in accordance with the wishes of the payee. RI 38–118, Rollover Information, explains the election. RI 37–22, Special Tax Notice Regarding Rollovers, provides more detailed information.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Rollover Election, Rollover Information, and Special Tax Notice Regarding Rollover.

OMB Number: 3206–0212.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 1,500.

Estimated Time per Respondent: 40 minutes.

Total Burden Hours: 1,000.

U.S. Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2022–16044 Filed 7–26–22; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95345; File No. SR–CTA/CQ–2021–02]

Consolidated Tape Association; Notice of Designation of a Longer Period for Commission Action on the Thirty-Seventh Substantive Amendment to the Second Restatement of the CTA Plan and the Twenty-Eighth Substantive Amendment to the Restated CQ Plan

July 21, 2022.

On November 5, 2021,[1] the Participants[2] in the Second Restatement of the Consolidated Tape Association (''CTA'') Plan and the Restated Consolidated Quotation (''CQ'') Plan (collectively ''CTA/CQ Plans'' or ''Plans'')[3] filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[4] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[5] a proposal (''Proposed Amendments'') to amend the Plans. The Proposed Amendments were published for comment in the **Federal Register** on November 29, 2021.[6]

On February 24, 2022, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of

[1] *See* Letter from Robert Books, Chair, CTA/CQ Plans Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).

[2] The ''Participants'' are: Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; Investors Exchange LLC; Long-Term Stock Exchange, Inc.; MEMX LLC; MIAX PEARL, LLC; Nasdaq BX, Inc.; Nasdaq ISE, LLC; Nasdaq PHLX LLC; The Nasdaq Stock Market LLC; New York Stock Exchange LLC; NYSE American LLC; NYSE Arca, Inc.; NYSE Chicago, Inc.; and NYSE National, Inc.

[3] The CTA Plan, pursuant to which markets collect and disseminate last-sale price information for non-Nasdaq-listed securities, is a ''transaction reporting plan'' under Rule 601 of Regulation NMS, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 of Regulation NMS, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for non-Nasdaq-listed securities, is a ''national market system plan'' under Rule 608 of Regulation NMS, 17 CFR 242.608. *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (Aug. 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (Jan. 22, 1980), 45 FR 6521 (Jan. 28, 1980) (permanently authorizing the CQ Plan).

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] *See* Securities Exchange Act Release No. 93615 (Nov. 19, 2021), 86 FR 67800 (Nov. 29, 2021) (''Notice''). Comments received in response to the Proposed Amendments are available at *https://www.sec.gov/comments/sr-ctacq-2021-02/srctacq202102.htm.*

Regulation NMS,[7] to determine whether to approve or disapprove the Proposed Amendments or to approve the Proposed Amendments with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.[8] On May 19, 2022, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[9] the Commission extended the period within which to conclude proceedings regarding the Proposed Amendments to 240 days from the date of publication of the Notice.[10]

Rule 608(b)(2)(ii) of Regulation NMS provides that the time for conclusion of proceedings to determine whether a national market system plan or proposed amendment should be disapproved may be extended for an additional period up to 60 days (up to 300 days from the date of notice publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the plan participants consent to the longer period.[11] The 240th day after publication of the Notice for the Proposed Amendments is July 27, 2022. The Commission is extending this 240-day period.

The Commission finds that it is appropriate to designate a longer period within which to conclude proceedings regarding the Proposed Amendments so that it has sufficient time to consider the Proposed Amendments and comments received. Accordingly, pursuant to Rule 608(b)(2)(ii) of Regulation NMS,[12] the Commission designates September 25, 2022, as the date by which the Commission shall conclude the proceedings to determine whether to approve or disapprove the Proposed Amendments or to approve the Proposed Amendments with any changes or subject to any conditions the Commission deems necessary or appropriate (File No. SR–CTA/CQ–2021–02).

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–16035 Filed 7–26–22; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 242.608(b)(2)(i).

[8] *See* Securities Exchange Act Release No. 94310 (Feb. 24, 2022), 87 FR 11748 (Mar. 2, 2022).

[9] *See* 17 CFR 242.608(b)(2)(i).

[10] *See* Securities Exchange Act Release No. 94951 (May 19, 2022), 87 FR 31920 (May 25, 2022).

[11] *See* 17 CFR 242.608(b)(2)(ii).

[12] *Id.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95348; File No. S7–24–89]

Joint Industry Plan; Notice of Designation of a Longer Period for Commission Action on the Fifty-Second Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis

On November 5, 2021,[1] certain participants in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq/UTP Plan'' or ''Plan'') [2] filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [3] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[4] a proposal (''Proposed Amendment'') to amend the Nasdaq/UTP Plan.[5] The Proposed Amendment was published for comment in the **Federal Register** on November 26, 2021.[6]

On February 24, 2022, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[7] to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.[8] On May 19, 2022, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[9] the Commission extended the period within which to conclude proceedings regarding the Proposed Amendment to 240 days from the date of publication of the Notice.[10]

Rule 608(b)(2)(ii) of Regulation NMS provides that the time for conclusion of proceedings to determine whether a national market system plan or proposed amendment should be disapproved may be extended for an additional period up to 60 days (up to 300 days from the date of notice publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the plan participants consent to the longer period.[11] The 240th day after publication of the Notice for the Proposed Amendment is July 24, 2022. The Commission is extending this 240-day period.

The Commission finds that it is appropriate to designate a longer period within which to conclude proceedings regarding the Proposed Amendment so that it has sufficient time to consider the Proposed Amendment and comments received. Accordingly, pursuant to Rule 608(b)(2)(ii) of Regulation NMS,[12] the Commission designates September 22, 2022, as the date by which the Commission shall conclude the proceedings to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate (File No. S7–24–89).

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–16038 Filed 7–26–22; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* Letter from Robert Books, Chair, Nasdaq/UTP Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).

[2] The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for its Participants. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. *See* Securities Exchange Act Release No. 55647 (Apr. 19, 2007), 72 FR 20891 (Apr. 26, 2007).

[3] 15 U.S.C. 78k–1.

[4] 17 CFR 242.608.

[5] The Proposed Amendment was approved and executed by more than the required two-thirds of the self-regulatory organizations (''SROs'') that are participants of the Plan. The participants that approved and executed the amendment (the ''Participants'') are: Cboe BYX Exchange, Inc, Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. The other SROs that are participants in the UTP Plan are: Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, and Nasdaq BX, Inc.

[6] *See* Securities Exchange Act Release No. 93618 (Nov. 19, 2021), 86 FR 67562 (Nov. 26, 2021) (''Notice''). Comments received in response to the Proposed Amendment are available at *https://www.sec.gov/comments/s7-24-89/s72489.htm.*

[7] 17 CFR 242.608(b)(2)(i).

[8] *See* Securities Exchange Act Release No. 94307 (Feb. 24, 2022), 87 FR 11787 (Mar. 2, 2022).

[9] *See* 17 CFR 242.608(b)(2)(i).

[10] *See* Securities Exchange Act Release No. 94953 (May 19, 2022), 87 FR 31921 (May 25, 2022).

[11] *See* 17 CFR 242.608(b)(2)(ii).

[12] *Id.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95344; File No. SR–CBOE–2022–036]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 5.6 and Rule 5.33 To Allow Delta-Adjusted at Close Orders To Be Submitted in Equity Options

July 21, 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, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 5.6 and Rule 5.33 to allow Delta-Adjusted at Close (''DAC'') orders to be submitted in equity options. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 5.6 and Rule 5.33 to allow DAC orders to be submitted in equity options.[3]

A DAC order is an order for which the System delta-adjusts its execution price after the market close. The DAC order instruction is available for simple and complex orders and allows Users to incorporate into their options pricing the closing price or value of the underlying on the transaction date based on how much that price or value changed during the trading day. Specifically, pursuant to the DAC order definition under Rule 5.6(c) (for simple DAC orders) and Rule 5.33(b)(5) (for complex DAC orders), the delta-adjusted execution price equals the original execution price plus the delta value times the difference between the official closing price or value of the underlying on the transaction date and the reference price or index value of the underlying (''reference price''). Upon order entry for electronic execution, a User must designate a delta value (per leg for complex DAC orders) and may designate a reference price. If no reference price is designated, the System will include the price or value, as applicable, of the underlying at the time of order entry as the reference price. Upon order entry for open outcry execution, a User may designate a delta value (for one or more legs for complex DAC orders) and/or a reference price. During the open outcry auction, in-crowd market participants will determine the final delta value(s) and/or reference price, which may differ from any delta value or reference price designated by the submitting User. The final delta value(s) and reference price would be reflected in the final terms of the execution. A DAC order (simple and complex) may only be submitted in options on ETPs and indexes for execution in a FLEX electronic auction or open outcry auction on the Exchange's trading floor pursuant to Rule 5.72.[4]

[3] The Exchange notes that reference to equity options and equity securities herein this proposal means options on securities that are not exchange-traded products (''ETPs'') and equity securities that are not ETPs (*i.e.,* single-name securities or single stocks), respectively. As noted below, DAC orders will continue to be available only for FLEX options.

[4] Additionally, pursuant to the definition of a DAC order under Rule 5.6(c) and Rule 5.33(b)(5), a DAC order submitted for execution in open outcry may only have a Time-in-Force of Day. A User may not designate a DAC order as All Sessions.

The Exchange proposes to make the DAC order instruction available for orders submitted in any FLEX option, including equity options. In particular, the proposed rule change amends the definition of a DAC order (simple and complex) to allow for DAC orders to be submitted in equity options by removing the restriction that a DAC order may only be submitted in options on ETPs and indexes. In particular, the proposed rule change to the definition of a simple DAC order under Rule 5.6(c) provides that a DAC order may only be submitted for execution in a FLEX electronic auction or open outcry auction on the Exchange's trading floor pursuant to Rule 5.72, and the proposed rule change to the definition of a complex DAC order under Rule 5.33(b)(5) provides that a complex DAC order may only be submitted for execution in a FLEX electronic auction or open outcry auction on the Exchange's trading floor pursuant to Rule 5.72. In addition to this, the proposed rule change adds to the definition of a simple DAC order under Rule 5.6(c) that a DAC order submitted in a single stock equity option may not be submitted until 45 minutes prior to the market close. A DAC order may not be submitted in a single stock equity option on its expiration day.

DAC orders are designed to allow investors to incorporate any upside market moves that may occur following execution of the order up to the market close while limiting downside risk. Significant numbers of market participants interact in the equity markets near the market close, which may substantially impact the price of an underlying equity security at the market close. For example, the Exchange understands that market makers and other liquidity providers seek to balance their books before the market close and contribute to increased price discovery surrounding the market close. The Exchange also understands it is common for other market participants to seek to offset intraday positions and mitigate exposure risks based on their predictions of the closing underlying prices. This substantial activity near the market close may create wider spreads and increased price volatility, which may attract further trading activity from those participants seeking arbitrage opportunities and further drive prices. The significant liquidity and price/value movements in securities, including equity securities, that can occur near the market close, may cause option closing and settlement prices to deviate significantly from option execution prices earlier that trading day. As such,

the Exchange wishes to provide its investors with the same opportunities to incorporate any upside market moves that may occur following execution of the order up to the market close while limiting downside risk in their equity options trading as currently provided for their ETP and index options trading by making DAC orders available in equity options.

Additionally, DAC orders are intended to benefit investors that participate in defined-outcome investment strategies,[5] which, at the time the DAC order was adopted, existed only for indexes and ETPs. Particularly, DAC orders allow such funds to incorporate market moves that may occur following execution of the order up to the market close while limiting risk and to allow such funds to employ certain FLEX options strategies that enable their investors to mitigate risk at the market close while also participating in beneficial market moves at the close.[6] The Exchange has recently been made aware that defined-outcome investment strategies are being created to provide exposure to individual equity securities and as a result has received growing customer demand to make DAC orders available in equity options.[7] The Exchange understands that, like defined-outcome strategies for ETPs and indexes, such funds for single-name equity securities would seek to use multi-leg strategy orders when seeding their funds,[8] and, like for any defined-outcome strategy, the goal of the strategies used by defined-outcome funds for single-name securities would be to price the execution of multi-leg strategy orders at the close of the underlying. Also, the Exchange understands that funds for multiple single-name equity securities would seek to use single-leg (*i.e.,* simple) orders to create a strategy when seeding their funds.[9] However, there is operational execution risk in attempting to fill an order near the close to capture the underlying closing price. A DAC complex order currently allows the User to execute a strategy order in connection with a fund for an ETP or an index prior to the close and have its price adjusted at the close. The proposed rule change would allow a User to execute strategy orders in connection with seeding a fund for an equity security in the same manner.[10] Like DAC complex orders for strategy orders in ETP and index options currently, DAC orders in equity options, either simple or complex depending on the structure of the fund, would allow the strategy order or orders to be executed at a time before the close, eliminating the execution risk, while realizing the objective of pricing based on the exact underlying close for those strategies that require pricing at the close or a defined amount of market exposure through the close. The proposed rule change would allow Users to participate in the same benefits—eliminating execution risk while realizing objective pricing—for their strategies in equity options as they are currently may for their strategies in ETP and index options.

As stated above, the proposed rule change also provides that a simple DAC order submitted in a single stock equity option may not be submitted until 45 minutes prior to the market close and may not be submitted on its expiration day. As a general rule, attempted manipulation of the price of a security encounters greater difficulty the more volume that is traded, and, generally, single name equity securities tend to be less liquid and experience greater price sensitivity and larger market moves than indexes or ETPs. The Exchange notes that on expiration day in particular, underlying equity securities may experience more price sensitivity than on non-expiration days and may be more susceptible to incentive to manipulate given that the exercise value of overlying options are contingent on the underlying closing price on expiration day. Options holders on expiration day, whether their positions were taken via a DAC execution or not, are subject to the risk of price swings in the underlying prior to the final close; however, options holders of positions taken via a DAC execution may potentially be more susceptible to such risk given the price adjustment at the close. For example, if a market participant executes a DAC order to buy calls on expiration day and a large price swing follows, in that, the underlying price is pushed significantly higher before the close, the DAC option holder would be forced to pay a much higher premium upon adjustment, and ultimately expiration. Therefore, in order to mitigate the potential risk associated with expiration day price swings, which may potentially expose DAC order users the gamma effect of options as they become more sensitive to underlying price changes as they approach expiration, particularly in options overlying less liquid securities, the proposed rule change restricts trading (regardless of opening or closing) in simple DAC orders in single stock options on expiration day. In addition to this, the proposed rule to require simple DAC orders in single stock options to be submitted no earlier than 45 minutes before the market close will reduce the amount of time during which the underlying price could potentially move; movements which, as stated above, may pose greater risk upon price adjustment at close to holders of DAC options. The Exchange notes that the same potential incentive to ''push'' the price of the underlying on expiration day in connection with the exercise price of an option is greatly diminished for multi-leg orders given that parties to multi-leg transactions are focused on the spread or ratio between the transaction prices for each of the legs (*i.e.,* the net price of the entire complex trade).

The Exchange notes that the same rules regarding the entry, execution and processing of DAC orders submitted in ETP and index options will apply to DAC orders submitted in equity options.[11] Unadjusted and adjusted

[5] Including defined-outcome ETFs, other managed funds, unit investment trusts (''UITs''), index funds, structured annuities, and other such funds or instruments that are indexed managed funds.

[6] *See* Securities Exchange Act Release No. 88997 (June 3, 2020), 85 FR 35351 (June 9, 2020) (SR–CBOE–2020–014).

[7] Indeed, in the proposal that adopted the DAC order instruction, the Exchange notes that if, at a later date, User demand warrants the availability of DAC orders for equity options, the Exchange could submit a proposal to make DAC orders available for equity options. *See id.*

[8] The Exchange understands that, like defined-outcome ETFs for ETPs and indexes, issuers of defined-outcome ETFs for equity securities would not buy stocks directly, but instead, use options contracts to deliver the price gain or loss of the underlying over the course of a year, up to a preset cap.

[9] The Exchange notes that funds for multiple single-name equity securities would seek to use simple orders across multiple single-name equity options when seeding their funds as multi-leg, multi-class strategies in single stock options are not available for trading on the Exchange.

[10] Because multi-leg strategies themselves may have delta offsets, the User is hedged, meaning that the User may realize a negative movement versus the initial execution on some legs, which is offset by a positive move in other legs. The Exchange notes that the strategies may or may not define an exact delta offset (''delta neutrality'' occurs where the strategy defines an exact delta offset). Given the delta neutral nature of an order with exact offset, a User is indifferent to any movement in the underlying from the time of execution to the close. Whether or not a User defines an exact delta offset, a User anticipates a given amount of market exposure, either partial or none, depending on the strategy and combinations of buy/sell, call/put and quantity. *See supra* note 6 at 35352.

[11] *See* Rule 5.6(c) (definition of simple DAC order), Rule 5.33(b)(5) (definition of complex DAC order), and Rule 5.34(c)(11) (DAC order reasonability check). The Exchange notes too that all DAC orders, currently and as proposed, are entered, priced, prioritized, allocated and execute as any other FLEX Order would when submitted into any FLEX electronic or open outcry auction and, like any FLEX Order, a FLEX DAC order may only be submitted into FLEX Options series eligible for trading pursuant to the FLEX Rules.

DAC trade information for DAC orders in equity options will be sent to the transacting parties, Options Clearing Corporation (''OCC'') and Options Price Reporting Agency (''OPRA'') in the same manner as such trade information for DAC orders in ETP and index options is currently sent today. The Exchange further notes that, similar to a DAC order instruction, the Exchange Rules already permit exercise prices for FLEX Equity Options series to be formatted as a percentage of the closing value of the underlying security.

The Exchange has analyzed its capacity and represents that it believes the Exchange and OPRA have the necessary systems capacity to handle any additional order traffic, and the associated restatements, that may result from the submission of DAC orders in equity options and represents that it continues to have an adequate surveillance program in place to monitor orders with DAC pricing, including such orders in equity options. The Exchange additionally notes that it intends to further enhance its surveillances to, among other things, monitor for certain changes in delta and stock price between an original order and the final terms of execution and to generally monitor activity in the underlying potentially related to DAC trades. The Exchange notes that it has not observed any impact on pricing or price discovery at or near the market close as a result of DAC orders submitted in ETP and index options and does not believe that making DAC orders available in equity options will have any impact on pricing or price discovery at or near the market close. The Exchange also notes that it has not identified an impact on pricing or price discovery at or near the close as a result of exercise prices for FLEX Equity Options series formatted as a percentage of the closing value of the underlying security, which is similar to a DAC order instruction and permitted on the Exchange today.

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.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [14] 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 making DAC orders available in all FLEX options, including equity options, will promote just and equitable principles of trade and will remove impediments to and perfect the mechanism of a free and open market and national market system and, in general, protect investors, as it will allow investors to realize the same benefits in connection with their equity options trading that they may currently realize through the use of DAC orders in their ETP and index options trading, as previously approved by the Commission.[15] As stated above, the Exchange has received growing customer demand to make DAC orders available in equity options.[16] The proposed change to make DAC orders available in all options will benefit investors by allowing them to incorporate into the pricing of their equity options the closing price of the underlying on the transaction date based on the amount that the price of the underlying changes intraday. This allows investors to incorporate potential upside market moves that may occur following the execution of an order up to the market close while limiting downside risk in the same manner as may today for their ETP and index options. Also, offering DAC orders in equity options will allow investors to use the underlying reference prices and delta to fully hedge their equity options positions taken during the trading day through the market close and potentially benefit from price movements at the close as they are already able to do for their ETP and index option positions. In addition to this, as managed funds for single-name securities are expected to begin utilizing strategies at the close in order to mitigate risk at the close and participate in beneficial market moves at the same time, the Exchange believes that DAC orders in equity options will offer to managed funds for equity securities the same method by which such funds for ETPs and indexes are currently able to meet these objectives through the execution of FLEX options, thereby benefiting investors that hold shares of these funds. Additionally, the proposed restrictions in connection with the submission of simple DAC orders in equity options are designed to prevent fraudulent and manipulative acts and practices and protect investors by mitigating the potential risk associated with expiration day price swings, which may potentially expose DAC order users to the gamma effect of options as they become more sensitive to underlying price changes as such options approach expiration, and reducing the amount of time during which the underlying price could potentially move. As described, single-name securities may experience greater price sensitivity and may experience larger price swings than compared to indexes and ETPs, and DAC options holders particularly may potentially be subject to a greater risk of paying much higher premiums given the price adjustment at close. The Exchange believes proposed will minimize any potential incentive to attempt to manipulate the equities that may underlie a DAC order, particularly those securities that may experience relatively lower volume, and will mitigate potential risk to holders of DAC options in single-name securities.

Further, the Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors because the same rules regarding the entry, execution and processing of DAC orders submitted in ETP and index options will apply to DAC orders submitted in equity options,[17] and all DAC trade information for DAC orders in equity options will be sent to the transacting parties, OCC and OPRA in the same manner as such trade information for DAC orders in ETP and index options is currently sent today. The Exchange represents that the Exchange itself and OPRA have the necessary systems capacity to handle any additional order traffic and the related restatements that may result from making DAC orders available in equity options and represents that it continues to have an adequate surveillance program in place to monitor orders with DAC pricing,

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

[15] *See* Securities and Exchange Act Release No. 90319 (November 3, 2020), 85 FR 71361 (November 9, 2020) (SR–CBOE–2020–014).

[16] *See supra* note 7.

[17] *See supra* note 11.

including such orders in equity options, thereby ensuring the protection of investors. In addition to this, the Exchange intends to further enhance its surveillances to, among other things, monitor for certain changes in delta and stock price between an original order and the final terms of execution and to generally monitor activity in the underlying potentially related to DAC trades. As noted above, the Exchange has not observed any impact on pricing or price discovery at or near the market close as a result of DAC orders submitted in ETP and index options, nor as a result of orders submitted in FLEX Equity Options series with exercise prices formatted as a percentage of the closing value of the underlying security, which are similar to DAC orders in equity options and currently permitted under the Exchange Rules. The Exchange does not believe that making DAC orders available in equity options will have any impact on pricing or price discovery at or near the market close.

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 proposed rule change will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because use of the DAC order instruction is optional and already available to all Users. The proposed rule change merely expands the availability of an optional order instruction to orders submitted in all FLEX options. The Exchange believes that making DAC orders available in FLEX equity options is consistent with current demand by market participants and will allow them to realize the same benefits in their equity options trading as they may currently realize for their ETP and index options trading through the use of DAC orders. Also, and as described above, the additional proposed parameters in connection with single-leg, single name DAC orders are designed to minimize any potential incentive to attempt to manipulate the equities that may underlie a DAC order, particularly those securities that may experience relatively lower volume, and will mitigate potential risk to holders of DAC options in single-name securities.

The proposed rule change will not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the Exchange already offers DAC order functionality—the proposed rule change merely expands the availability of the DAC order instruction to orders in all FLEX options. The proposed rule change it is intended to provide market participants in equity options with an additional means to manage risks in connection with potential volatility and downside price swings that may occur near the market close, while allowing them to receive potential benefits associated with any upside market moves near the market close. The Exchange believes the proposed rule change may foster competition, as other options exchanges in their discretion may pursue the adoption of similar orders applicable to equity options, which will result in additional choices for investors.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2022–036 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2022–036. 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–CBOE–2022–036, and should be submitted on or before August 17, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–16041 Filed 7–26–22; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95346; File No. SR–CTA/CQ–2021–03]

Consolidated Tape Association; Notice of Designation of a Longer Period for Commission Action on the Twenty-Fifth Charges Amendment to the Second Restatement of the CTA Plan and Sixteenth Charges Amendment to the Restated CQ Plan

July 21, 2022.

On November 5, 2021,[1] certain participants in the Second Restatement of the Consolidated Tape Association (''CTA'') Plan and the Restated Consolidated Quotation (''CQ'') Plan (collectively ''CTA/CQ Plans'' or ''Plans'')[2] filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[3] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[4] a proposal (''Proposed Amendments'') to amend the Plans.[5] The Proposed Amendments were published for comment in the **Federal Register** on November 26, 2021.[6]

On February 24, 2022, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[7] to determine whether to approve or disapprove the Proposed Amendments or to approve the Proposed Amendments with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.[8] On May 19, 2022, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[9] the Commission extended the period within which to conclude proceedings regarding the Proposed Amendments to 240 days from the date of publication of the Notice.[10]

Rule 608(b)(2)(ii) of Regulation NMS provides that the time for conclusion of proceedings to determine whether a national market system plan or proposed amendment should be disapproved may be extended for an additional period up to 60 days (up to 300 days from the date of notice publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the plan participants consent to the longer period.[11] The 240th day after publication of the Notice for the Proposed Amendments is July 24, 2022. The Commission is extending this 240-day period.

The Commission finds that it is appropriate to designate a longer period within which to conclude proceedings regarding the Proposed Amendments so that it has sufficient time to consider the Proposed Amendments and comments received. Accordingly, pursuant to Rule 608(b)(2)(ii) of Regulation NMS,[12] the Commission designates September 22, 2022, as the date by which the Commission shall conclude the proceedings to determine whether to approve or disapprove the Proposed Amendments or to approve the Proposed Amendments with any changes or subject to any conditions the Commission deems necessary or appropriate (File No. SR–CTA/CQ–2021–03).

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–16036 Filed 7–26–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95347; File No. S7–24–89]

Joint Industry Plan; Notice of Designation of a Longer Period for Commission Action on the Fifty-First Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis

July 21, 2022.

On November 5, 2021,[1] the Participants[2] in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq/UTP Plan'' or ''Plan'')[3] filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[4] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[5] a proposal (''Proposed Amendment'') to amend the Nasdaq/UTP Plan. The Proposed Amendment was published for comment in the **Federal Register** on November 26, 2021.[6]

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[1] *See* Letter from Robert Books, Chair, CTA/CQ Plans Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).

[2] The CTA Plan, pursuant to which markets collect and disseminate last-sale price information for non-Nasdaq-listed securities, is a ''transaction reporting plan'' under Rule 601 of Regulation NMS, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 of Regulation NMS, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for non-Nasdaq-listed securities, is a ''national market system plan'' under Rule 608 of Regulation NMS, 17 CFR 242.608. *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (Aug. 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (Jan. 22, 1980), 45 FR 6521 (Jan. 28, 1980) (permanently authorizing the CQ Plan).

[3] 15 U.S.C. 78k–1.

[4] 17 CFR 242.608.

[5] The Proposed Amendments were approved and executed by more than the required two-thirds of the self-regulatory organizations (''SROs'') that are participants of the Plans. The participants that approved and executed the amendments (the ''Participants'') are: Cboe BYX Exchange, Inc, Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. The other SROs that are participants in the Plans are: Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, and Nasdaq BX, Inc.

[6] *See* Securities Exchange Act Release No. 93625 (Nov. 19, 2021), 86 FR 67517 (Nov. 26, 2021) (''Notice''). Comments received in response to the Proposed Amendments are available at *https://www.sec.gov/comments/sr-ctacq-2021-03/srctacq202103.htm.*

[7] 17 CFR 242.608(b)(2)(i).

[8] *See* Securities Exchange Act Release No. 94309 (Feb. 24, 2022), 87 FR 11763 (Mar. 2, 2022).

[9] *See* 17 CFR 242.608(b)(2)(i).

[10] *See* Securities Exchange Act Release No. 94952 (May 19, 2022), 87 FR 31921 (May 25, 2022).

[11] *See* 17 CFR 242.608(b)(2)(ii).

[12] *Id.*

[1] *See* Letter from Robert Books, Chair, Nasdaq/UTP Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).

[2] The ''Participants'' are: Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; Investors Exchange LLC; Long-Term Stock Exchange, Inc.; MEMX LLC; MIAX PEARL, LLC; Nasdaq BX, Inc.; Nasdaq ISE, LLC; Nasdaq PHLX LLC; The Nasdaq Stock Market LLC; New York Stock Exchange LLC; NYSE American LLC; NYSE Arca, Inc.; NYSE Chicago, Inc.; and NYSE National, Inc.

[3] The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for its Participants. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. *See* Securities Exchange Act Release No. 55647 (Apr. 19, 2007), 72 FR 20891 (Apr. 26, 2007).

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] *See* Securities Exchange Act Release No. 93620 (Nov. 19, 2021), 86 FR 67541 (Nov. 26, 2021)

On February 24, 2022, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[7] to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.[8] On May 19, 2022, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[9] the Commission extended the period within which to conclude proceedings regarding the Proposed Amendment to 240 days from the date of publication of the Notice.[10]

Rule 608(b)(2)(ii) of Regulation NMS provides that the time for conclusion of proceedings to determine whether a national market system plan or proposed amendment should be disapproved may be extended for an additional period up to 60 days (up to 300 days from the date of notice publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the plan participants consent to the longer period.[11] The 240th day after publication of the Notice for the Proposed Amendment is July 24, 2022. The Commission is extending this 240-day period.

The Commission finds that it is appropriate to designate a longer period within which to conclude proceedings regarding the Proposed Amendment so that it has sufficient time to consider the Proposed Amendment and comments received. Accordingly, pursuant to Rule 608(b)(2)(ii) of Regulation NMS,[12] the Commission designates September 22, 2022, as the date by which the Commission shall conclude the proceedings to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate (File No. S7–24–89).

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–16037 Filed 7–26–22; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17489 and #17490; Montana Disaster Number MT–00158]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Montana

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Montana (FEMA–4655–DR), dated 06/16/2022.

Incident: Severe Storm and Flooding.

Incident Period: 06/10/2022 through 07/05/2022.

DATES: Issued on 07/15/2022.

Physical Loan Application Deadline Date: 08/15/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 03/16/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Montana, dated 06/16/2022, is hereby amended to establish the incident period for this disaster as beginning 06/10/2022 through 07/05/2022.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Joshua Barnes,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–16033 Filed 7–26–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17497 and #17498; Montana Disaster Number MT–00159]

Presidential Declaration Amendment of a Major Disaster for the State of Montana

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Montana (FEMA–4655–DR), dated 06/30/2022.

Incident: Severe Storm and Flooding.

Incident Period: 06/10/2022 through 07/05/2022.

DATES: Issued on 07/15/2022.

Physical Loan Application Deadline Date: 08/29/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 03/30/2023.

ADDRESSES: Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Montana, dated 06/30/2022, is hereby amended to establish the incident period for this disaster as beginning 06/10/2022 through 07/05/2022.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Joshua Barnes,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–16034 Filed 7–26–22; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2022–0034]

Interventional Cooperative Agreement Program (ICAP)

AGENCY: Social Security Administration (SSA).

ACTION: Announcement of funding opportunity, the Interventional Cooperative Agreement Program (ICAP).

SUMMARY: We are announcing a newly opened funding opportunity, the fiscal year (FY) 2022 application period of the Interventional Cooperative Agreement

(''Notice''). Comments received in response to the Proposed Amendment are available at *https://www.sec.gov/comments/s7-24-89/s72489.htm.*

[7] 17 CFR 242.608(b)(2)(i).

[8] *See* Securities Exchange Act Release No. 94308 (Feb. 24, 2022), 87 FR 11755 (Mar. 2, 2022).

[9] *See* 17 CFR 242.608(b)(2)(i).

[10] *See* Securities Exchange Act Release No. 94954 (May 19, 2022), 87 FR 31922 (May 25, 2022).

[11] *See* 17 CFR 242.608(b)(2)(ii).

[12] *Id.*

Program (ICAP). The purpose of this program is to allow us to enter into cooperative agreements to collaborate with States, foundations, and other non-Federal groups and organizations who have the interest and ability to identify, operate, and partially fund interventional research. The Request for Applications is now open on *Grants.gov*.

FOR FURTHER INFORMATION CONTACT: Dionne Mitchell, Grant Officer, Office of Acquisition and Grants, Social Security Administration, Telephone: (410) 965–9534, or send an email to *Grants.Team@ssa.gov* (indicate ''ICAP Inquiry'' in subject line).

SUPPLEMENTARY INFORMATION: ICAP provides a process through which we can systematically solicit and review proposals from outside organizations (including States, foundations, and other non-Federal groups and organizations) and enter into cooperative agreements with them for collaboration on interventional research. We hope to benefit from and collaborate with local, external knowledge about potential interventions relevant to individuals who receive Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits. ICAP priority research topics are as follows:

- Eliminating the structural barriers in the labor market, including for racial, ethnic, or other underserved communities, including people with disabilities, in order to decrease the likelihood of people needing to receive or apply for SSDI or SSI benefits;
- Promoting self-sufficiency by helping people, including youth, enter, stay in, or return to the labor force;
- Coordinating planning between private and public human services agencies to improve the administration and effectiveness of the SSDI, SSI, and related programs;
- Assisting claimants in underserved communities to apply for or appeal determinations or decisions on claims for SSDI and SSI benefits; and
- Conducting outreach to people with disabilities who are potentially eligible to receive SSI.

For more information, please see the Request for Applications for funding opportunity FO# ICAP–ICAP–22–001 on *Grants.gov*.

We will hold a webinar for organizations interested in applying for this research funding opportunity on Wednesday, August 3 at 12 noon Eastern time. For more information and to register for the webinar, please see *https://ocomm.gov1.qualtrics.com/jfe/form/SV_3EFkzi9aKDj3IrQ.*

The Acting Commissioner of Social Security, Kilolo Kijakazi, Ph.D., M.S.W., having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

[FR Doc. 2022–16109 Filed 7–26–22; 8:45 am]

BILLING CODE 4191–02–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36500]

Canadian Pacific Railway Limited; Canadian Pacific Railway Company; Soo Line Railroad Company; Central Maine & Quebec Railway US Inc.; Dakota, Minnesota & Eastern Railroad Corporation; and Delaware & Hudson Railway Company, Inc. Control—Kansas City Southern; The Kansas City Southern Railway Company; Gateway Eastern Railway Company; and The Texas Mexican Railway Company

AGENCY: Surface Transportation Board.

ACTION: Decision No. 22; notice of public hearing; revision of procedural schedule; page limit for final briefs.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing in this proceeding on September 28, 29, and 30, 2022. The hearing will be held in the Hearing Room of the Board's headquarters, located at 395 E Street SW, Washington, DC 20423–0001. All interested persons are invited to appear in person or via online video conferencing. Additionally, the Board will revise the procedural schedule and set a limit of 30 pages for final briefs.

DATES: The hearing will be held on September 28, 29, and 30, 2022, beginning at 9:30 a.m. EDT and ending around 5:30 p.m. EDT each day and will be open for public observation. The hearing also will be available for viewing on the Board's website. Persons may participate online using video conferencing. The Board will issue a subsequent decision with instructions for participation in, and public observation of, the hearing. Any person wishing to speak at the hearing shall file with the Board by September 14, 2022, a notice of intent to participate (identifying the entity, if any, the person represents, the proposed speaker, and whether they will appear in person or via video conferencing, and summarizing the key points the speaker intends to address). Each speaker will be allotted five minutes for their presentation unless they request otherwise in their notice of intent, in which case, the Board will consider the request for a different allotment. The notices of intent to participate are not required to be served on the parties of record; they will be posted to the Board's website when they are filed. Final briefs will be due after the public hearing, by October 14, 2022.

ADDRESSES: All filings pertaining to the public hearing should refer to Docket No. FD 36500 and/or appropriate subdockets and must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 245–0283. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On October 29, 2021, Canadian Pacific Railway Limited (Canadian Pacific); Canadian Pacific Railway Company, and their U.S. rail carrier subsidiaries, Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware & Hudson Railway Company, Inc. (collectively, CP); and Kansas City Southern and its U.S. rail carrier subsidiaries, The Kansas City Southern Railway Company (KCSR), Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, KCS) (CP and KCS collectively, Applicants), filed an application (Application) seeking Board approval for the acquisition of control by Canadian Pacific, through its indirect, wholly owned subsidiary Cygnus Merger Sub 2 Corporation, of Kansas City Southern, and through it, of KCSR and its railroad affiliates, and for the resulting common control by Canadian Pacific of its U.S. railroad subsidiaries, and KCSR and its railroad affiliates (Transaction). By decision served November 23, 2021, and published in the **Federal Register** on November 26, 2021 (86 FR 67,571), the Board accepted for consideration the primary Application filed in Docket No. FD 36500 and established a procedural schedule for the proceeding.[1]

By decision served July 1, 2022, and published in the **Federal Register** on

[1] The procedural schedule was amended by decision served on May 27, 2022. *Canadian Pac. Ry.—Control—Kan. City S.* (*Decision No. 18*), FD 36500 et al. (STB served May 27, 2022).

July 7, 2022 (87 FR 40,576), the Board accepted for consideration the responsive applications filed in Docket Nos. FD 36500 (Sub-Nos. 1–4) by Canadian National Railway Company and its rail carrier affiliate, Illinois Central Railroad Company (ICRR) (collectively, CN),[2] and FD 36500 (Sub-No. 5) by Norfolk Southern Railway Company (NSR).[3] [4]

Section 11324(a) of title 49 of the U.S. Code requires the Board in a control proceeding to ''hold a public hearing unless the Board determines that a public hearing is not necessary in the public interest.'' In *Decision No. 11,* FD 36500, the Board stated that it would decide whether to conduct a public hearing after the record had been more fully developed. *Decision No. 11,* FD 36500, slip op. at 18 n.13. Based on the comments that have been submitted, the Board finds that a public hearing, which will provide the Board an opportunity to directly question the Applicants and other interested persons about the issues that have been raised, is in the public interest. *See Decision No. 18,* FD 36500 et al., slip op. at 4 n.3 (noting the likelihood of a public hearing given the complexity of the proposed Transaction and the many issues raised by it and the responsive applications). Environmental and historic preservation issues will be addressed through the ongoing environmental review process being conducted by the Board's Office of Environmental Analysis. During the public hearing, the Board will not consider issues being addressed through the environmental review process.

Under the current procedural schedule, final briefs are due by September 20, 2022, prior to any public hearing. *Decision No. 18,* FD 36500 et al., slip op. at 4. However, the Board finds that it would be beneficial to receive final briefs after the public hearing and will amend the procedural schedule to have final briefs due by October 14, 2022. As such, October 14, 2022, will be considered the close of the record.[5] Additionally, the page limit for final briefs will be set at 30 pages.[6]

Prior to the hearing date, the Board will issue a decision setting a schedule of appearances with specific allotments of time for presentations. Each speaker will be allotted five minutes for their presentation unless they request otherwise in their notice of intent, in which case, the Board will consider the request for a different allotment. Speakers should be prepared to keep their comments succinct to ensure an opportunity for questions by the Board and for all interested persons to be heard. The schedule will also provide, among other things, that Applicants will speak first, and that they may choose to reserve part of their time for a closing statement. Speakers at the hearing are encouraged to use their time to call attention to the points they believe to be particularly important. The purpose of the hearing is not to restate the written submissions, but to summarize and emphasize the key points of a party's case or a speaker's position, and to provide an opportunity for the speaker to respond to questions the Board may have regarding the matters at issue.

Board Releases and Transcript Availability: Decisions and notices of the Board, including this notice, are available on the Board's website at *www.stb.gov.* The Board will issue a separate notice containing the schedule of appearances, as well as instructions for participating in and observing the hearing. A recording of the hearing and a transcript will be posted on the Board's website when they become available.

It is ordered:

1. A public hearing will be held on September 28, 29, and 30, 2022, beginning at 9:30 a.m. EDT and ending around 5:30 p.m. EDT each day, in the Hearing Room of the Board's headquarters, located at 395 E Street SW, Washington, DC 20423–0001.

2. By September 14, 2022, any person wishing to speak at the hearing shall file with the Board a notice of intent to participate: (i) identifying the entity, if any, the person represents, the proposed speaker, and whether the speaker will appear in person or via video conferencing, and (ii) summarizing the key points the speaker intends to address.

3. Notices of intent to participate will be posted to the Board's website and need not be served on parties of record, any hearing participants, or other commenters.

4. Final briefs will be due by October 14, 2022.

5. Final briefs are limited to no more than 30 pages.

6. This decision is effective on its service date.

7. This decision will be published in the **Federal Register**.

Decided: July 22, 2022.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2022–16089 Filed 7–26–22; 8:45 am]

BILLING CODE 4915–01–P

[2] In Docket Nos. FD 36500 (Sub-No. 1), FD 36500 (Sub-No. 2), FD 36500 (Sub-No. 3), and FD 36500 (Sub-No. 4), CN seeks, as a condition to any approval of the proposed Transaction, approval of ICRR's acquisition of KCS's line between Kansas City, Mo., and Springfield and East St. Louis, Ill., and other related relief. (CN Amended Responsive Appl. 6–7.)

[3] In Docket No. FD 36500 (Sub-No. 5), as a condition to any approval of the proposed Transaction, NSR seeks certain contingent trackage rights for overhead movement on KCS's line between the connection of KCS with the Meridian Speedway, at Shreveport, La., and the Wylie Intermodal Terminal, in Wylie, Tex. (NSR Amended Responsive Appl. 4, 9.)

[4] This decision embraces: Docket No. FD 36500 (Sub-No. 1), *Illinois Central Railroad—Acquisition of a Line of Railroad Between Kansas City, Mo., & Springfield & East St. Louis, Ill.—Kansas City Southern Railway;* Docket No. FD 36500 (Sub-No. 2), *Illinois Central Railroad—Trackage Rights Between Airline Junction, Mo., & Grandview, Mo.—Kansas City Southern Railway;* Docket No. FD 36500 (Sub-No. 3), *Canadian National Railway—Control—Gateway Eastern Railway;* Docket No. FD 36500 (Sub-No. 4), *Illinois Central Railroad—Assignment of KCS Trackage Rights Between Rock Creek Junction, Mo., & Airline Junction, Mo.—Union Pacific Railroad;* and Docket No. FD 36500 (Sub-No. 5), *Norfolk Southern Railway—Trackage Rights—Kansas City Southern. Canadian Pac. Ry.—Control—Kan. City S.* (*Decision No. 11*), FD 36500 (STB served Nov. 23, 2021).

[5] Additionally, in response to an inquiry from the public, the Board clarifies that, as indicated in the Appendix to *Decision No. 18,* FD 36500 et al., submissions permitted to be filed by August 11, 2022, are limited to rebuttals in support of responsive, including inconsistent, applications.

[6] The Board previously stated that it would determine the page limits for final briefs after the record had been more fully developed. *Decision No. 11,* FD 36500, slip op. at 17 n.12.

TENNESSEE VALLEY AUTHORITY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Tennessee Valley Authority (TVA).

ACTION: 30-Day notice of submission of information collection approval request to OMB.

SUMMARY: Tennessee Valley Authority (TVA) provides notice of submission of this information clearance request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The general public and other federal agencies are invited to comment. TVA previously published a 60-day notice of the proposed information collection for public review (May 18, 2022) and no comments were received.

DATES: The OMB will consider all written comments received on or before August 26, 2022.

ADDRESSES: Written comments 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.

SUPPLEMENTARY INFORMATION:

Type of Request: New collection.

Title of Information Collection: LPC FIRST Financial Reporting.

Frequency of Use: Monthly and Annually.

Type of Affected Public: Business or Local Government.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 455.

Estimated Number of Annual Responses: 153.

Estimated Total Annual Burden Hours: 2693.

Estimated Average Burden Hours per Response: 14 hours (Annual Report); 0.3 hours (Monthly Report).

Need for and Use of Information: TVA, serving in its regulatory capacity, uses this financial and statistical information to monitor each distributor's current financial position and to forecast requirements for reasonable levels of resources for renewals, replacements, and contingencies. The data from this information collection is used by TVA organizations (Regulatory Assurance, Commercial Energy Solutions, Treasury and Risk, Regional Relations and Transmission and Power Supply) and the TVA Board of Directors to assist in making management decisions concerning electric power rates, financing the TVA power generating and transmission system, and other long-term plans. If this information collection is not conducted, TVA would be severely hampered in fulfilling its responsibilities to Congress under Section 11 of the TVA Act of 1933 to ''permit domestic and rural use [of electricity] at the lowest possible rates.'' TVA has deployed the new Financial Information & Regulatory System Tool (FIRST) to streamline data collection and reduce the burden on the public.

Rebecca L. Coffey,

Agency Records Officer.

[FR Doc. 2022–16030 Filed 7–26–22; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0154]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Commercial Motor Vehicle Marking Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. This ICR will enable FMCSA to document the burden associated with the marking regulations, ''Marking of Self-Propelled CMVs and Intermodal Equipment.'' These regulations require marking of vehicles and intermodal equipment by motor carriers, freight forwarders, and intermodal equipment providers (IEPs) engaging in interstate transportation and motor carriers that transport hazardous materials (HM) in intrastate transportation.

DATES: Comments on this notice must be received on or before September 26, 2022.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2022–0154 using any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy heading below.

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, or go to the street address listed above.

Privacy: In accordance with 5 CFR 1320.8(d)(1), DOT solicits comments from the public to better inform its decision-making process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Stacy Ropp, Compliance Division, DOT, FMCSA, West Building, 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; 609–661–2062; *Stacy.Ropp@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Transportation (Secretary) is authorized to require marking of vehicles and intermodal equipment by motor carriers, freight forwarders and IEPs engaging in interstate transportation based on the authority of 49 U.S.C. 31133(a)(8) and 31133(a)(10). The Secretary has delegated authority pertaining to the marking of commercial motor vehicles (CMVs) pursuant to 49 CFR 1.87(f). The Agency's regulation governing the marking of CMVs is codified at 49 CFR 390.21.

Vehicle marking requirements are intended to ensure that FMCSA, the National Transportation Safety Board, and State safety officials are able to identify motor carriers and correctly assign responsibility for regulatory violations during inspections, investigations, compliance reviews, and crash studies. These marking requirements will also provide the

public with beneficial information that could assist in identifying carriers for the purposes of commerce, complaints or emergency notification. The marking requirements apply to motor carriers, freight forwarders, and IEPs engaging in interstate transportation and motor carriers that transport HM in intrastate transportation. The Agency does not require a specific method of marking as long as the marking complies with FMCSA's regulations. The increase of 6,023,242 estimated annual burden hours (7,196,937 proposed estimated annual burden hours—1,713,695 approved estimated annual burden hours) is due to adjustments in respondent and response estimates.

Title: Commercial Motor Vehicle Marking Requirements.

OMB Control Number: 2126–0054.

Type of Request: Renewal of a currently approved ICR.

Respondents: Freight-carrying commercial motor carriers, passenger-carrying commercial motor carriers, and intermodal equipment providers.

Estimated Number of Respondents: 895,485 total respondents (861,643 freight-carrying motor carriers; 17,167 intrastate hazardous materials transporting motor carriers; 15,114 passenger-carrying motor carriers; and 1,561 IEPs).

Estimated Time per Response: 26 minutes [12 minutes to affix USDOT Number + 14 minutes for affixing a carrier's name].

Expiration Date: October 31, 2022.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 7,196,937 total hours (4,907,276 hours spent by freight-carrying motor carriers; 239,666 hours spent by intrastate hazardous materials transporting motor carriers; 47,645 hours spent by passenger-carrying motor carriers; and 2,002,351 hours spent by IEPs). All of these entities spent these hours marking their CMVs with a USDOT number and motor carrier information.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2022–16040 Filed 7–26–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FY 2022 Competitive Funding Opportunity: All Stations Accessibility Program

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of funding opportunity (NOFO).

SUMMARY: The Federal Transit Administration (FTA) announces the opportunity to apply for approximately $343 million in competitive grants under the fiscal year (FY) 2022 All Stations Accessibility Program (ASAP).

DATES: Complete proposals must be submitted electronically through the *GRANTS.GOV* ''APPLY'' function by 11:59 p.m. Eastern time on September 30, 2022. Prospective applicants should initiate the process by registering on the *GRANTS.GOV* website promptly to ensure completion of the application process before the submission deadline. Instructions for applying can be found on FTA's website at *http://www.transit.dot.gov/howtoapply* and in the ''FIND'' module of *GRANTS.GOV*. The funding opportunity ID is FTA–2022–009–TPM–ASAP.

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, please contact the All Stations Accessibility Program Manager, Kevin Osborn, via email at *Kevin.Osborn@dot.gov,* or call 202–366–7519.

SUPPLEMENTARY INFORMATION:

Table of Contents

A. Program Description

Division J of the Bipartisan Infrastructure Law (enacted as the Infrastructure Investment and Jobs Act, Pub. L. 117–58) authorizes FTA to award grants for public transportation rail station accessibility projects, for ''legacy'' stations, through a competitive process, as described in this notice. Legacy stations for purposes of this NOFO are defined as public transportation stations already constructed or where construction began prior to January 25, 1992, or for commuter rail stations already constructed or where construction began prior to October 7, 1991, that were not identified as key stations and remain not accessible to or usable by persons with disabilities, including wheelchair users. ASAP provides funding to States (including territories and Washington, DC) and local governmental authorities to help finance capital projects to upgrade the accessibility of legacy rail fixed guideway public transportation systems (*e.g.,* subway, commuter rail, light rail) for persons with disabilities, including those who use wheelchairs, by increasing the number of existing stations or facilities, such as outdoor light-rail boarding and alighting areas, that are fully accessible. For purposes of this NOFO, ''fully accessible'' means all of the passenger-use publicly accessible areas in the station(s) or facilities for passenger use meet or exceed the standards for new construction under Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 *et seq.*) as incorporated into Appendix A of 49 CFR part 37. Grants under this program are for (1) capital projects to repair, improve, modify, retrofit, or relocate infrastructure of stations or facilities for passenger use, including load-bearing members that are an essential part of the structural frame; or (2) for planning projects to develop or modify a plan for pursuing public transportation accessibility projects, assessments of accessibility, or assessments of planned modifications to stations or facilities for passenger use.

This funding opportunity can be found under Federal Assistance Listing 20.533.

This program supports FTA's priorities and objectives through investments that (1) renew our transit systems, (2) advance racial equity, (3) maintain and create good-paying jobs with a free and fair choice to join a union, (4) remove barriers to transit access for underserved communities, and (5) connect communities. This program will be implemented, as appropriate and consistent with law, in alignment with the priorities in Executive Order 14052, Implementation of the Infrastructure Investment and Jobs Act (86 FR 64355). In addition, this NOFO will advance the goals of the President's January 20, 2021, Executive Order 13985, Advancing Racial Equity and Support for Underserved

Communities Through the Federal Government (86 FR 7009).

B. Federal Award Information

The Bipartisan Infrastructure Law appropriated $350,000,000 for FY 2022 grants. Additional funds made available prior to project selection may be allocated to eligible projects. After the administrative oversight and Office of Inspector General takedown of $7,000,000, FTA is announcing the availability of $343,000,000 for ASAP through this notice. FTA may cap the amount a single recipient or State may receive as part of the selection process.

FTA will grant pre-award authority to incur costs for selected projects beginning on the date FY 2022 project selections are announced on FTA's website. Funds are available for obligation for three fiscal years after the fiscal year in which the competitive awards are announced. Funds are available only for eligible costs incurred after the date project selections are announced. FTA intends to fund as many meritorious projects as possible.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants for ASAP include designated recipients that operate or allocate funds to inaccessible pre-ADA—or ''legacy''—rail fixed guideway public transportation systems, and States (including territories and Washington, DC) and local governmental entities that operate or financially support legacy rail fixed guideway public transportation systems and corresponding legacy stations/facilities. The law limits ASAP to legacy rail fixed guideway public transportation systems with stations or facilities for passenger use that are not already accessible to and usable by persons with disabilities, including wheelchair users. To be considered eligible, applicants must be able to demonstrate the requisite legal, financial, and technical capabilities to receive and administer Federal funds under this program. Assistance on this requirement is available from FTA's Regional Offices.

2. Cost Sharing or Matching

The maximum Federal share as identified in the law for an eligible project shall not exceed 80 percent of the net project cost.

Eligible sources of match include the following: state or local government revenues, cash from non-Government sources other than revenues from providing public transportation services; revenues derived from the sale of advertising and concessions; amounts received under a service agreement with a State or local social service agency or private social service organization; revenues generated from value capture financing mechanisms; funds from an undistributed cash surplus; replacement or depreciation cash fund or reserve; new capital; or in-kind contributions. Transportation development credits or in-kind match may be used for local match if identified and documented in the application.

3. Eligible Projects

Eligible projects under ASAP include (1) capital projects to repair, improve, modify, retrofit, or relocate infrastructure of stations or facilities for passenger use, including load-bearing members that are an essential part of the structural frame; or (2) for planning projects to develop or modify a plan for pursuing public transportation accessibility projects, assessments of accessibility, or assessments of planned modifications to stations or facilities for passenger use projects; or programs of projects in an eligible area. Capital projects are limited to those that, upon completion, will meet or exceed the standards for new construction under Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 *et seq.*), as incorporated into Appendix A of 49 CFR part 37. Eligible costs are limited to project costs associated with the accessibility improvements.

Neither a capital grant nor a planning grant awarded under this program may be used to upgrade a station or facility for passenger use that is already accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, consistent with the construction standards under Title II of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. 12131 *et seq.*) in place at the time the station or passenger facility was originally constructed or upgraded. Only legacy stations or passenger facilities that existed prior to the ADA and were not made accessible in the intervening time are therefore eligible.

Any project of station upgrades or passenger facility that does not result in full accessibility consistent with Title II of the ADA as incorporated by appendix A of 49 CFR part 37 and usability by persons with disabilities, including wheelchair users, is not eligible under this program. Projects for maintenance or repair activities for elements of existing accessible stations or passenger facilities that are otherwise subject to the ongoing maintenance requirements under 49 CFR 37.161(a) are not eligible under this program. Maintenance and repair activities for stations altered under this program are subject to the same ongoing maintenance provision, and are similarly ineligible.

D. Application and Submission Information

1. Address To Request Application Package

Application materials may be accessed on *grants.gov*. Applications must be submitted electronically through *GRANTS.GOV*. General information for accessing and submitting applications through *GRANTS.GOV* can be found at *www.fta.dot.gov/howtoapply* along with specific instructions for the forms and attachments required for submission. A complete proposal submission for each program consists of two forms: the SF–424 Application for Federal Assistance (available at *GRANTS.GOV*) and the supplemental form for the FY 2022 All Stations Accessibility Program (downloaded from *GRANTS.GOV* or the FTA website at *https://www.transit.dot.gov/notices-funding/fiscal-year-2022-all-stations-accessibility-program-notice-funding-opportunity*. Please note that if an applicant is applying for both a planning and construction project they must submit two different applications via *GRANTS.GOV*. Failure to submit the information as requested can delay review or disqualify the application.

2. Content and Form of Application Submission

a. Proposal Submission

A complete proposal submission for each program consists of two forms: (1) the SF–424 Application for Federal Assistance; and (2) the supplemental form for the FY 2022 All Stations Accessibility Program. The supplemental form and any supporting documents must be attached to the ''Attachments'' section of the SF–424. The application must include responses to all sections of the SF–424 Application for Federal Assistance and the supplemental form, unless indicated as optional. The information on the supplemental form will be used to determine applicant and project eligibility for the program, and to evaluate the proposal against the selection criteria described in part E of this notice.

FTA will accept only one supplemental form per SF–424 submission. FTA encourages States and other applicants to consider submitting a single supplemental form that includes multiple activities to be evaluated as a consolidated proposal. If

a State or other applicant chooses to submit separate proposals for individual consideration by FTA, each proposal must be submitted using a separate SF–424 and supplemental form. Applicants applying for both a planning and a construction project must submit two separate applications, one for each type of project.

Applicants may attach additional supporting information to the SF–424 submission, including but not limited to letters of support, project budgets, accessibility information, or excerpts from relevant planning documents. Any supporting documentation must be described and referenced by file name in the appropriate response section of the supplemental form, or it may not be reviewed.

Information such as applicant name, Federal amount requested, local match amount, description of areas served, etc. may be requested in varying degrees of detail on both the SF–424 and supplemental form. Applicants must fill in all fields unless stated otherwise on the forms. If information is copied into the supplemental form from another source, applicants should verify that pasted text is fully captured on the supplemental form and has not been truncated by the character limits built into the form. Applicants should use both the ''Check Package for Errors'' and the ''Validate Form'' validation buttons on both forms to check all required fields on the forms, and ensure that the Federal and local amounts specified are consistent. Applicants should enter their information in the supplemental form (fillable PDF) that is made available on FTA's website or through the *GRANTS.GOV* application package, and should attach this to the application in its original format. Applicants should not use scanned versions of the form, ''print'' the form to PDF, convert or create a version using another text editor, etc.

b. Application Content

The SF–424 Application for Federal Assistance and the supplemental form will prompt applicants for the required information, including:

i. Applicant name
ii. Unique Entity Identifier
iii. Key contact information (including contact name, address, email address, and phone)
iv. Congressional district(s) where project will take place
v. Project information (including title, an executive summary, and type)
vi. A detailed description of the need for the project
vii. A detailed description on how the project will support the Program's objectives
viii. Evidence that the project is consistent with local and regional planning documents
ix. Evidence that the applicant can provide the local cost share
x. A description of the technical, legal, and financial capacity of the applicant
xi. A detailed project budget
xii. An explanation of the scalability of the project
xiii. Details on the local matching funds
xiv. A detailed project timeline
xv. A system map and listing of accessible vs inaccessible stations, and which station(s) they are proposing to upgrade.

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant is required to: (1) be registered in SAM before submitting an application; (2) provide a valid unique entity identifier in its application; and (3) continue to maintain an active SAM registration with current information at all times during which the applicant has an active Federal award or an application or plan under consideration by FTA. These requirements do not apply if the applicant has an exemption approved by FTA pursuant to 2 CFR 25.110(c) or is otherwise excepted from registration requirements. FTA may not make an award until the applicant has complied with all applicable unique entity identifier and SAM requirements. If an applicant has not fully complied with the requirements by the time FTA is ready to make an award, FTA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a Federal award to another applicant.

All applicants must provide a unique entity identifier provided by SAM. Registration in SAM may take as little as 3–5 business days, but since there could be unexpected steps or delays (for example, if there is a need to obtain an Employer Identification Number), FTA recommends allowing ample time, up to several weeks, for completion of all steps. For additional information on obtaining a unique entity identifier, please visit *https://www.sam.gov.*

4. Submission Dates and Times

Project proposals must be submitted electronically through *GRANTS.GOV* by 11:59 p.m. Eastern time on September 30, 2022. *GRANTS.GOV* attaches a time stamp to each application at the time of submission. Proposals submitted after the deadline will only be considered under extraordinary circumstances for reasons not under the applicant's control. Mail and fax submissions will not be accepted.

Within 48 hours after submitting an electronic application, the applicant should receive an email message from *GRANTS.GOV* with confirmation of successful transmission to *GRANTS.GOV*. If a notice of failed validation or incomplete materials is received, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the submission deadline. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated and check the box on the supplemental form indicating this is a resubmission.

FTA urges applicants to submit applications at least 72 hours prior to the due date to allow time to receive the validation messages and to correct any problems that may have caused a rejection notification. *GRANTS.GOV* scheduled maintenance and outage times are announced on the *GRANTS.GOV* website. Deadlines will not be extended due to scheduled website maintenance.

Applicants are encouraged to begin the process of registration on the *GRANTS.GOV* site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. Registered applicants may still be required to take steps to keep their registrations up to date before submissions can be made successfully. For example, registration in SAM is renewed annually, and persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in *GRANTS.GOV* by the AOR to make submissions.

5. Funding Restrictions

Funds under this NOFO cannot be used to reimburse applicants for otherwise eligible expenses incurred prior to FTA award of a grant agreement until FTA has issued pre-award authority for selected projects. FTA expects to issue pre-award authority to incur costs for selected projects beginning on the date that project selections are announced. FTA does not provide pre-award authority for competitive funds until projects are selected, and even then, there are Federal requirements that must be met before costs are incurred. FTA will issue specific guidance to awardees regarding pre-award authority at the time of selection. For more information about FTA's policy on pre-award authority, please see the most recent Apportionment Notice on FTA's website. Refer to Section C.3., Eligible Projects, for information on activities that are allowable in this grant program. Allowable direct and indirect expenses

must be consistent with the Government-wide Uniform Administrative Requirements and Cost Principles (2 CFR part 200) and FTA Circular 5010.1E. Funds may not be used to support or oppose union organizing.

6. Other Submission Requirements

All applications must be submitted via the *GRANTS.GOV* website. FTA does not accept applications on paper, by fax machine, email, or other means. For information on application submission requirements, please see Section D.1. of this notice, Address to Request Application.

E. Application Review Information

1. Criteria

Projects will be evaluated primarily on the responses provided in the supplemental form. Additional information may be provided to support the responses; however, any additional documentation must be directly referenced on the supplemental form, including the file name where the additional information can be found. FTA will evaluate proposals based on the criteria described in this notice.

Applicants are encouraged to identify scaled funding options in case insufficient funding is available to fund a project at the full requested amount. If an applicant indicates that a project is scalable, the applicant must provide an appropriate minimum funding amount that will fund an eligible project that achieves the objectives of the program and meets all relevant program requirements. Proposed scalable projects must still result in a station or passenger facility with full accessibility to and usability by persons with disabilities, including wheelchair users. The applicant must provide a clear explanation of how the project budget would be affected by a reduced award. FTA may award a lesser amount regardless of whether a scalable option is provided.

a. Demonstration of Need

For Station or Passenger Facility Accessibility Improvement Projects

Applicants should explain the need for the project, including supporting information that describes the lack of accessibility at, the condition, of and age of the stations or passenger facilities for passenger use to be made fully accessible. Applicants are encouraged to include a detailed project description and scope that explains how the proposed project will make all of the passenger-use publicly accessible areas in the station(s) or facilities for passenger use fully accessible in accordance with title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 *et seq.*), as incorporated into Appendix A of 49 CFR part 37. Applicants should demonstrate that this is a legacy rail station that was not already required to be made fully accessible in accordance with the ADA.

Applicants should provide information explaining whether the project (1) addresses an overall lack of accessible stations in a particular geographic area; (2) is at a major interchange point with other transportation modes; (3) serves major activity or cultural centers, such as employment or government centers, sports or entertainment venues, centers of economic activity or commerce, cultural or community centers, institutions of higher education, hospitals or other major health care facilities, or other facilities that are major trip generators; (4) is a transfer station(s) on a rail line, between rail lines, or is an end of the line station; (5) is a station or passenger facility where passenger boardings exceed average station or facility passenger boardings on the rail system and/or (6) is able to demonstrate reductions in ADA paratransit reliance through paratransit origin-to-destination pairs analysis.

For Planning Projects

Applicants should demonstrate that the proposed planning project will develop or modify a plan for pursuing public transportation accessibility projects, assessments of accessibility, or assessments of planned modifications to stations or facilities for passenger use. Applicants are encouraged to reference how the project supports local and regional prioritization of increased accessibility at their existing legacy rail fixed guideway public transportation stations or passenger facilities.

b. Demonstration of Benefits

For Station or Passenger Facility Accessibility Improvement Projects

Applicants should specifically detail how the project will increase the accessibility of legacy rail fixed guideway public transportation systems for persons with disabilities, including those who use wheelchairs, by increasing the number of existing stations or passenger facilities for passenger use that meet or exceed the standards for new construction under Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 *et seq.*) as incorporated into Appendix A of 49 CFR part 37. See: *https://www.access-board.gov/files/ada/ADAdotstandards.pdf.* FTA will rate projects higher if they propose to exceed the construction standards, by providing multiple paths of travel for people with physical disabilities (including those who use wheelchairs) or technologies to improve accessibility for people with sensory or cognitive disabilities, as examples. The applicant should describe how the proposed station, stations, or facilities for passenger use were analyzed and selected to improve accessibility and usability for passengers with disabilities within the system.

For Planning Projects

Applicants must detail how the resulting planning project will advance accessibility for persons with disabilities, including wheelchair users, and result in a future capital project that will make a legacy station or facility fully accessible. Applicants should address the timeline and steps remaining after the project would be completed, before a construction project could commence to repair, improve, modify, retrofit, or relocate infrastructure of stations or facilities for passenger use.

c. Planning and Local or Regional Prioritization

Applicants must demonstrate how the proposed project is consistent with local and regional long-range planning documents and local government priorities. FTA will evaluate applications based on the extent to which the project is consistent with the transit priorities or illustrative projects identified in the metropolitan long-range plan or the investment prioritization of the transit asset management plan. Applicants may submit copies of the relevant pages of such plans to support their application. FTA will also consider letters of support from local and regional planning organizations, local government officials, public agencies, non-profit or private sector organizations, and other relevant stakeholders.

Applicants should also provide any information documenting outreach to, engagement with, and support for the project among the surrounding local disability community, such as centers for independent living, as well as other communities likely to be affected by the project. This should also include details on compliance with environmental justice and civil rights requirements, such as access for persons with limited English proficiency and for persons with disabilities. Applications will be rated higher that demonstrate how the

passenger stations or facilities proposed for investment were selected from a stakeholder engagement process with local disability community members and organizations, including individuals with physical disabilities (including those who use wheelchairs), sensory disabilities, and intellectual or developmental disabilities. Letters of support may be submitted with the application that demonstrate that each station proposed for investment is supported by stakeholders in the surrounding disability community.

d. Local Financial Commitment

Applicants must identify the source of the non-Federal cost share and describe whether such funds are currently available for the project or will need to be secured if the project is selected for funding. FTA will consider the availability of the non-Federal cost share as evidence of local financial commitment to the project. Applicants should submit evidence of the availability of funds for the project, for example, by including a board resolution, letter of support from the State, a budget document highlighting the line item or section committing funds to the proposed project, or other documentation of the source of non-Federal funds.

e. Project Implementation Strategy

FTA will rate projects higher if grant funds can be obligated within 12 months of selection and the project can be implemented within a reasonable time frame. In assessing when funds can be obligated, FTA will consider whether the project qualifies for a Categorical Exclusion (CE), or whether the required environmental work has been initiated or completed for a project that requires an Environmental Assessment (EA) or Environmental Impact Statement (EIS) under the National Environmental Policy Act of 1969 (NEPA). As such, applicants should submit information describing the project's anticipated path and timeline through the environmental review process for all proposals, including whether the project qualifies for a CE. The proposal must state when grant funds can be obligated and indicate the timeframe under which the Metropolitan Transportation Improvement Program (TIP) and Statewide Transportation Improvement Program (STIP) can be amended, if necessary, to include the proposed project.

In assessing whether the proposed implementation plans are reasonable and complete, FTA will review the proposed project implementation plan, including all necessary project milestones and the overall project timeline. For projects that will require formal coordination, approvals, or permits from other agencies or project partners, the applicant must demonstrate coordination with these organizations and their support for the project, such as through letters of support.

f. Technical, Legal, and Financial Capacity

Applicants must demonstrate that they have the technical, legal, and financial capacity to undertake the project.

FTA will review relevant oversight assessments and records to determine whether there are any outstanding legal, technical, or financial issues with the applicant that would affect the outcome of the proposed project. Applicants with outstanding legal, technical, or financial compliance issues from an FTA compliance review or FTA grant-related Single Audit finding must explain how corrective actions taken will mitigate negative impacts on the proposed project.

2. Review and Selection Process

A technical evaluation committee will evaluate proposals based on the published evaluation criteria. FTA may request additional information from applicants, if necessary. Based on the review of the technical evaluation committee, the FTA Administrator will determine the final selection of projects for program funding. In determining the allocation of program funds, FTA may consider geographic diversity, diversity in the size of the transit systems receiving funding, and the applicant's receipt of other competitive awards. FTA may also consider capping the amount a single applicant may receive.

After applying the above criteria, and in support of Executive Order 14052, Implementation of the Infrastructure Investment and Jobs Act, FTA will give priority based on several considerations.

FTA will give priority consideration to applications that advance racial equity in two areas: (1) planning and policies related to racial equity and overcoming barriers to opportunity; and (2) project investments that either proactively address racial equity and barriers to opportunity, including automobile dependence as a form of barrier, or redress prior inequities and barriers to opportunity. This objective has the potential to enhance environmental stewardship and community partnerships, and reflects Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. FTA encourages the applicant to include sufficient information to evaluate how the applicant will advance racial equity and address barriers to opportunity. The applicant should describe any transportation plans or policies related to equity and barriers to opportunity they are implementing or have implemented in relation to the proposed project, along with the specific project investment details necessary for FTA to evaluate if the investments are being made either proactively to advance racial equity and address barriers to opportunity or redress prior inequities and barriers to opportunity. All project investment costs for the project that are related to racial equity and barriers to opportunity should be summarized.

FTA will also give priority consideration to projects that create good paying jobs with the free and fair choice to join a union and these strong labor protections. Applicants for capital projects should describe whether and how project delivery and implementation create good-paying jobs with the free and fair choice to join a union to the greatest extent possible, the use of demonstrated strong labor standards, practices and policies (including for direct employees, contractors, and subcontractors); distribution of workplace rights notices; the use of local and economic hiring provisions; registered apprenticeships; or other similar standards or practices; or, for capital projects over $35 million, the use of Project Labor Agreements. Applicants should describe how planned methods of project delivery and implementation (for example, use of Project Labor Agreements and/or local and economic hiring provisions, and training and placement programs for underrepresented workers) provides opportunities for all workers, including workers with disabilities and other workers underrepresented in construction jobs to be trained and placed in good-paying jobs directly related to the project.

3. Integrity and Performance Review

Prior to making an award with a total amount of Federal share greater than the simplified acquisition threshold (currently $250,000), FTA is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information Systems (FAPIIS) accessible through SAM. An applicant may review and comment on information about itself that a Federal awarding agency previously entered. FTA will consider any comments by the applicant, in addition to the 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 2 CFR 200.206.

F. Federal Award Administration Information

1. Federal Award Notices

FTA will announce the final project selections on the FTA website. Selectees should contact their FTA Regional Offices for additional information regarding allocations for projects. At the time the project selections are announced, FTA expects to extend pre-award authority for the selected projects (see Section D.5 of this notice for more information). There is no pre-award authority for these projects before announcement.

2. Administrative and National Policy Requirements

a. Grant Requirements

If selected, awardees will apply for a grant through FTA's Transit Award Management System (TrAMS). Recipients of funding in urban areas are subject to the grant requirements of the Urbanized Area Formula Grants program (49 U.S.C. 5307), including those of FTA Circular ''Urbanized Area Formula Program: Program Guidance and Application Instructions'' (FTA.C.9030.1E). Recipients of funding in rural areas are subject to the grant requirements of the Formula Grants for Rural Areas Program (49 U.S.C. 5311), including those of FTA Circular ''Formula Grants for Rural Areas: Program Guidance and Application Instructions'' (FTA.C.9040.1G). All recipients must accept the FTA Master Agreement and follow FTA Circular ''Award Management Requirements'' (FTA.C.5010.1E) and the labor protections required by Federal public transportation law (49 U.S.C. 5333(b)). Technical assistance regarding these requirements is available from the relevant FTA regional office.

By submitting a grant application, the applicant assures that it will comply with all applicable Federal statutes, regulations, Executive Orders, directives, FTA circulars and other Federal administrative requirements in carrying out any project supported by the FTA grant, including the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction''). Further, the applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. The applicant must submit the Certifications and Assurances before receiving a grant if it does not have current certifications on file.

As authorized by Section 25019 of the BIL, applicants are encouraged to implement a local or other geographical or economic hiring preference relating to the use of labor for construction of a project funded by the grant, including pre-hire agreements, subject to any applicable State and local laws, policies, and procedures.

b. Made in America

All capital procurements must comply with FTA's Buy America requirements (49 U.S.C. 5323(j)), which require that all iron, steel, and manufactured products be produced in the United States. In addition, any award must comply with the Build America, Buy America Act (BABA) (Pub. L. 117–58, sections 70901–52). BABA provides that none of the funds provided under an award made pursuant to this notice may be used for a project unless all iron, steel, manufactured products, and construction materials are produced in the United States. FTA's Buy America requirements are consistent with BABA requirements for iron, steel, and manufactured products. DOT issued a temporary public interest waiver for construction materials for a period of 180 days beginning on May 14, 2022, and expiring on November 10, 2022. The waiver can be found at *https://www.transportation.gov/sites/dot.gov/files/2022-05/Temporary%20Waiver%20of%20Buy%20America%20Requirements%20for%20Construction%20Materials.pdf.*

Any proposal that will require a waiver of any domestic preference standard must identify the items for which a waiver will be sought in the application. Applicants should not proceed with the expectation that waivers will be granted.

c. Civil Rights Requirements

Applications should demonstrate that the recipient has a plan for compliance with civil rights obligations and nondiscrimination laws, including Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act, and accompanying regulations. This should include a current Title VI program plan and a completed Community Participation Plan (alternatively called a Public Participation Plan and often part of the overall Title VI program plan), if applicable. Applicants who have not sufficiently demonstrated the conditions of compliance with civil rights requirements will be required to do so before receiving funds.

Recipients of Federal transportation funding will be required to comply fully with the DOT's regulations and guidance for the ADA and all relevant civil rights requirements. The Department's and FTA's Office of Civil Rights will work with awarded grant recipients to ensure full compliance with Federal civil rights requirements.

d. Disadvantaged Business Enterprise

Recipients of planning or capital assistance that will award prime contracts, the cumulative total of which exceeds $250,000 in FTA funds in a Federal fiscal year, must comply with the Disadvantaged Business Enterprise (DBE) program regulations (49 CFR part 26).

FTA will provide additional guidance as grants are awarded. For more information on DBE requirements, please call Monica McCallum, FTA Office of Civil Rights, at 206–220–7519, or email *Monica.McCallum@dot.gov.*

e. Planning

FTA encourages applicants to notify the appropriate State departments of transportation and Metropolitan Planning Organizations (MPOs) in areas likely to be served by the project funds made available under this program. Selected projects must be incorporated into the long-range plans and transportation improvement programs of States and metropolitan areas before they are eligible for FTA funding.

3. Reporting

Post-award reporting requirements include the electronic submission of Federal Financial Reports and Milestone Progress Reports in FTA's electronic grants management system. Recipients of funds made available through this NOFO are also required to regularly submit data to the National Transit Database. Recipients should include any goals, targets, and indicators referenced in their applications in the Executive Summary of the TrAMS application.

FTA is committed to making evidence-based decisions guided by the best available science and data. In accordance with the Foundations for Evidence-based Policymaking Act of 2018 (Evidence Act), FTA may use information submitted in discretionary funding applications; information in FTA's Transit Award Management System (TrAMS), including grant applications, Milestone Progress Reports (MPRs), Federal Financial Reports (FFRs); transit service, ridership and operational data submitted in FTA's National Transit Database; documentation and results of FTA oversight reviews, including triennial and state management reviews; and other publicly available sources of data to build evidence to support policy, budget, operational, regulatory, and management processes and decisions affecting FTA's grant programs.

As part of completing the annual certifications and assurances required of FTA grant recipients, a successful applicant must report on the suspension or debarment status of itself and its principals. If the award recipient's active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of an award made pursuant to this notice, the recipient must comply with the Recipient Integrity and Performance Matters reporting requirements described in Appendix XII to 2 CFR part 200.

G. Federal Awarding Agency Contacts

For further information concerning this notice, please contact the ASAP Program Manager, Kevin Osborn via email at *Kevin.Osborn@dot.gov,* or by phone at 202–366–7519. A TDD is available for individuals who are deaf or hard of hearing at 800–877–8339. In addition, FTA will post answers to questions and requests for clarifications on FTA's ASAP homepage at: *https://www.transit.dot.gov/grants/all-stations-accessibility-program.* To ensure applicants receive accurate information about eligibility or the program, applicants are encouraged to contact FTA with questions directly, rather than through intermediaries or third parties.

For technical issues with *GRANTS.GOV*, please contact *GRANTS.GOV* by phone at 1–800–518–4726 or by email at *support@grants.gov.* Contact information for FTA's regional offices can be found on FTA's website at *https://www.transit.dot.gov/about/regional-offices/regional-offices.*

H. Other Information

User-friendly information and resources regarding DOT's discretionary grant programs relevant to rural applicants can be found on the Rural Opportunities to Use Transportation for Economic Success (ROUTES) website at *https://www.transportation.gov/rural.*

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Nuria I. Fernandez,

Administrator.

[FR Doc. 2022–16094 Filed 7–26–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0144]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Unbridaled (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 26, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0144 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0144 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0144, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel UNBRIDALED is:

—*Intended Commercial Use of Vessel:* ''Provide part time pleasure/sightseeing in southwest Florida area for up to 12 passengers. Hailing port is Fort Myers Beach, FL''

—*Geographic Region Including Base of Operations:* ''Florida and Georgia.'' (Base of Operations: Fort Myers Beach, FL)

—*Vessel Length and Type:* 64′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0144 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0144 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–16135 Filed 7–26–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

U.S. Maritime Transportation System National Advisory Committee; Notice of Public Meeting

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: The Maritime Administration (MARAD) announces a public meeting of the U.S. Maritime Transportation System National Advisory Committee (MTSNAC) to discuss advice and recommendations for the U.S. Department of Transportation on issues related to the marine transportation system.

DATES: The meeting will be held on Tuesday, August 30, 2022, from 9:00 a.m. to 4:30 p.m. and Wednesday, August 31, 2022, from 9:00 a.m. to 4:30 p.m. Eastern Daylight Time (EDT). Requests to attend the meeting must be received no later than 5:00 p.m. EDT on the prior week Monday, August 22, 2022, in order to facilitate entry. Requests for accommodations to a disability must be received by the day prior to the meeting Monday, August 29, 2022. Those requesting to speak during the public comment period of the meeting must submit a written copy of their remarks to DOT no later than Monday, August 22, 2022. Requests to submit written materials to be reviewed during the meeting must also be received by Monday, August 22, 2022.

ADDRESSES: The meeting will be held at the DOT Conference Center located at 1200 New Jersey Ave. SE, Washington, DC 20590. Any committee related request should be sent to the person listed in the following section.

FOR FURTHER INFORMATION CONTACT: Chad Dorsey, Designated Federal Officer, at *MTSNAC@dot.gov* or at (202) 997–6205. Maritime Transportation System National Advisory Committee, 1200 New Jersey Avenue SE, W21–307, Washington, DC 20590. Please visit the MTSNAC website at *https://www.maritime.dot.gov/outreach/maritime-transportation-system-mts/maritime-transportation-system-national-advisory-0.*

SUPPLEMENTARY INFORMATION:

I. Background

The MTSNAC is a Federal advisory committee that advises the U.S. Secretary of Transportation through the Maritime Administrator on issues related to the marine transportation system. The MTSNAC was originally established in 1999 and mandated in 2007 by the Energy Independence and Security Act of 2007 (Pub. L. 110–140). The MTSNAC is codified at 46 U.S.C. 50402 and operates in accordance with the provisions of the Federal Advisory Committee Act.

II. Agenda

The agenda will include: (1) welcome, opening remarks, and introductions; (2) administrative items; (3) subcommittee break-out sessions; (4) updates to the Committee on the subcommittee work; (5) public comments; and (6) discussions relevant to formulate recommendations for improving the maritime transportation strategy. A final agenda will be posted on the MTSNAC internet website at *https://www.maritime.dot.gov/outreach/maritime-transportation-system-mts/maritime-transportation-system-national-advisory-0* at least one week in advance of the meeting.

III. Public Participation

The meeting will be open to the public. Members of the public who wish to attend in person must RSVP to the person listed in the **FOR FURTHER INFORMATION CONTACT** section with your name and affiliation. Seating will be limited and available on a first-come-first-serve basis.

Services for Individuals with Disabilities: The public meeting is physically accessible to people with disabilities. The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Public Comments: A public comment period will commence at approximately 11:45 a.m. EST on August 30, 2022, and again on August 31, 2022, at the same time. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to

contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting or preferably emailed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Additional written comments are welcome and must be filed as indicated below.

Written comments: Persons who wish to submit written comments for consideration by the Committee must send them to the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

(Authority: 49 CFR part 1.93(a); 5 U.S.C. 552b; 41 CFR parts 102–3; 5 U.S.C. app. Sections 1–16)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–16072 Filed 7–26–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–x0145]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: GODS GRACE (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 26, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0145 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0145 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0145, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel GODS GRACE is:

—*Intended Commercial Use of Vessel:* ''I intend to use this vessel for sunset and daytime cruises in and around southern Georgia and the west coast of Florida, FL''

—*Geographic Region Including Base of Operations:* ''Florida and Georgia.'' (Base of Operations: Saint Simons Island, GA)

—*Vessel Length and Type:* 50′ Sail (Catamaran)

The complete application is available for review identified in the DOT docket as MARAD 2022–0145 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0145 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential

under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–16125 Filed 7–26–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0151]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Fifty Shades (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 26, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0151 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0151 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0151, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel FIFTY SHADES is:

—*Intended Commercial Use of Vessel:* ''Charter.''

—*Geographic Region Including Base of Operations:* ''Florida, Georgia, South Carolina, North Carolina, Virginia, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Maine.'' (Base of Operations: Davie, FL)

—*Vessel Length and Type:* 106′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0151 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0151 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on

behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–16123 Filed 7–26–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0155]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Gemini Star (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 26, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0155 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0155 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0155, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel GEMINI STAR is:

—*Intended Commercial Use of Vessel:* ''Vessel will primarily be used for crewed charters of 6 passengers or less.''

—*Geographic Region Including Base of Operations:* ''Florida, Massachusetts, Rhode Island.'' (Base of Operations: Key West, FL)

—*Vessel Length and Type:* 51′ Motor (Power Catamaran)

The complete application is available for review identified in the DOT docket as MARAD 2022–0155 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0155 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–16124 Filed 7–26–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0146]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SKIPPER (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 26, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0146 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0146 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0146, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SKIPPER is:

—*Intended Commercial Use of Vessel:* ''Six passenger excursion in and around Catalina Island, California and Bed and Breakfast accommodations at dock and mooring.''

—*Geographic Region Including Base of Operations:* ''California.'' (Base of Operations: Catalina Island, CA)

—*Vessel Length and Type:* 42.1′ Sail.

The complete application is available for review identified in the DOT docket as MARAD 2022–0146 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES.** Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0146 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–16131 Filed 7–26–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0152]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Salty Girl (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 26, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0152 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0152 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0152, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SALTY GIRL is:

—*Intended Commercial Use of Vessel:* ''Personal use and occasional small charters.''
—*Geographic Region Including Base of Operations:* ''Massachusetts, South Carolina.'' (Base of Operations: Chelsea, MA)
—*Vessel Length and Type:* 25′ Motor (Pontoon)

The complete application is available for review identified in the DOT docket as MARAD 2022–0152 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES.** Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0152 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–16128 Filed 7–26–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0156]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Ligeia (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 26, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0156 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0156 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0156, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel LIGEIA is:

—*Intended Commercial Use of Vessel:* ''Private vessel charters, passengers only.''

—*Geographic Region Including Base of Operations:* ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York (excluding waters in New York harbor), New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, California, Oregon, Washington, and Alaska (excluding waters in Southeastern Alaska).'' (Base of Operations: San Francisco, CA)

—*Vessel Length and Type:* 56′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0156 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0156 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–16127 Filed 7–26–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0158]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Dauntless (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 26, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0158 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0158 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0158, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel DAUNTLESS is:

—*Intended Commercial Use of Vessel:* ''Small charter operation for photography groups, sunset cruises, dolphin watching, etc. Not for fishing.''
—*Geographic Region Including Base of Operations:* ''Maryland and Virginia.'' (Base of Operations: Annapolis, MD)
—*Vessel Length and Type:* 42′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0158 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0158 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–16122 Filed 7–26–22; 8:45 am]

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Part II

Department of Energy

10 CFR Parts 429 and 431
Energy Conservation Program: Test Procedure for Direct Expansion-Dedicated Outdoor Air Systems; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[EERE–2017–BT–TP–0018]

RIN 1904–AE46

Energy Conservation Program: Test Procedure for Direct Expansion-Dedicated Outdoor Air Systems

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (''DOE'') is publishing a final rule to establish definitions for ''direct expansion-dedicated outdoor air systems'' (''DX–DOASes'') and ''unitary dedicated outdoor air systems'' (''unitary DOASes''). Unitary DOASes are a category of small, large, and very large commercial package air conditioning and heating equipment under the Energy Policy and Conservation Act, as amended. In addition, DOE is establishing a test procedure to measure the energy efficiency of DX–DOASes, which aligns with the most recent version of the relevant industry consensus test standards for DX–DOASes, with certain minor modifications. Lastly, DOE is adopting supporting definitions, energy efficiency metrics for dehumidification and heating modes, and provisions governing public representations as part of this rulemaking.

DATES: The effective date of this rule is August 26, 2022. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on August 26, 2022. Representations with respect to energy use or efficiency of direct expansion-dedicated outdoor air systems must be based on testing conducted in accordance with this final rule on or after July 24, 2023.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket web page can be found at *www.regulations.gov/docket/EERE-2017-BT-TP-0018*. The docket web page contains instructions on how to access all documents, including public comments, in the docket. For further information on how to review the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT:

Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov*.

Mr. Matthew Ring, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2555. Email: *Matthew.Ring@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following industry standards into title 10 of the Code of Federal Regulations (''CFR'') part 431:

Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') Standard 920 (I–P) with Addendum 1, ''2020 Standard for Performance Rating of Direct Expansion-Dedicated Outdoor Air System Units,'' copyright 2021.

AHRI Standard 1060 (I–P), ''2018 Standard for Performance Rating of Air-to-Air Exchangers for Energy Recovery Ventilation Equipment,'' copyright 2018.

Copies of AHRI 920–2020 (I–P) with Addendum, and AHRI Standard 1060–2018 can be obtained from the Air-Conditioning, Heating, and Refrigeration Institute, 2311 Wilson Blvd., Suite 400, Arlington, VA 22201, (703) 524–8800, or online at: *www.ahrinet.org/*.

ANSI/American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE'') Standard 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' ASHRAE-approved June 24, 2009.

ANSI/ASHRAE Standard 41.1–2013, ''Standard Method for Temperature Measurement,'' ANSI-approved January 30, 2013.

ANSI/ASHRAE Standard 41.6–2014, ''Standard Method for Humidity Measurement,'' ANSI-approved July 3, 2014.

ANSI/ASHRAE Standard 198–2013, ''Method of Test for Rating DX-Dedicated Outdoor Air Systems for Moisture Removal Capacity and Moisture Removal Efficiency,'' ANSI-approved January 30, 2013.

Copies of ANSI/ASHRAE Standard 37–2009, ANSI/ASHRAE Standard 41.1–2013, ANSI/ASHRAE Standard 41.6–2014, and ANSI/ASHRAE Standard 198–2013 can be obtained from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 180 Technology Parkway, Peachtree Corners, GA 30092, (404) 636–8400, or online at: *www.ashrae.org*.

See section IV.N of this document for a further discussion of these industry standards.

Table of Contents

I. Authority and Background

Small, large, and very large commercial package air conditioning and heating equipment are included in the list of ''covered equipment'' for which the DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(B)–(D)) As defined by the Energy Policy and Conservation Act, as amended (''EPCA''),[1] ''commercial package air conditioning and heating equipment'' means air-cooled, water-cooled, evaporatively-cooled, or water-source (not including ground-water-source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial application. (42 U.S.C. 6311(8)(A)) Industry standards generally describe unitary central air conditioning equipment as one or more factory-made assemblies that normally include an evaporator or cooling coil and a compressor and condenser combination. Units equipped to also perform a heating function are included.[2] Unitary dedicated outdoor air systems (''unitary DOASes'') provide conditioning of outdoor ventilation air, normally using a refrigeration cycle consisting of a compressor, condenser, expansion valve, and evaporator, and therefore, DOE has concluded that unitary DOASes are a category of commercial package air conditioning and heating equipment subject to EPCA. An industry consensus test standard has been established for direct expansion-dedicated outdoor air systems (''DX–DOASes''), which are a subset of unitary DOASes and which are the subject of this final rule. The following sections discuss DOE's authority to establish test procedures for DX–DOASes, as well as relevant background information regarding DOE's adoption of the industry consensus test standard, and clarifications to the industry test procedure for this equipment.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C[3] of EPCA, Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This covered equipment includes small, large, and very large commercial package air conditioning and heating equipment. (42 U.S.C. 6311(1)(B)–(D)) DOE has determined that commercial package air conditioning and heating equipment includes unitary DOASes. As discussed in section I.B of this document, this equipment has not previously been addressed in DOE rulemakings and are not currently subject to Federal test procedures or energy conservation standards.

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making other representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited circumstances for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, the statute also sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered equipment. Specifically, EPCA requires that any test procedure prescribed or amended shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of covered equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

EPCA requires that the test procedures for commercial package air conditioning and heating equipment be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE''), as referenced in ASHRAE 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (''ASHRAE 90.1''). (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must update its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3), related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B))

EPCA also requires that, at least once every seven years, DOE evaluate test procedures for each type of covered equipment, including commercial package air conditioning and heating equipment, to determine whether test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency,

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] *See* American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE'') Standard 90.1–2019, ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' p. 38.

[3] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1))

In addition, if the Secretary determines that a test procedure amendment is warranted, the Secretary must publish proposed test procedures in the **Federal Register**, and afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures.

As discussed in section I.B of this document, a test procedure for DX–DOASes was first specified by ASHRAE 90.1 in the 2016 edition (''ASHRAE 90.1–2016''). Pursuant to 42 U.S.C. 6314(a)(4)(B) and following updates to the relevant test procedures referenced in ASHRAE 90.1, DOE is establishing a test procedure for DX–DOASes in satisfaction of its aforementioned obligations under EPCA.

B. Background

From a functional perspective, unitary DOASes operate similarly to other categories of commercial package air conditioning and heat pump equipment, in that they provide conditioning, normally using a refrigeration cycle generally consisting of a compressor, condenser, expansion valve, and evaporator. Unitary DOASes provide ventilation and conditioning of 100-percent outdoor air to the conditioned space, whereas for typical commercial package air conditioners that are central air conditioners, outdoor air makes up only a small portion of the total airflow (usually less than 50 percent). This conditioned outdoor air is then delivered directly or indirectly to the conditioned spaces. A unitary DOAS may precondition outdoor air using an enthalpy wheel, sensible wheel, plate heat exchanger, heat pipe, or other heat or mass transfer apparatus. Unitary DOASes are typically installed in addition to a local, primary cooling or heating system (*e.g.,* commercial unitary air conditioner, variable refrigerant flow system, chilled water system, water-source heat pumps)—the unitary DOAS conditions the outdoor ventilation air, while the primary system provides cooling or heating to balance building shell and interior loads and solar heat gain. According to ASHRAE, a well-designed system using a unitary DOAS can ventilate a building at lower installed cost, reduce overall annual building energy use, and improve indoor environmental quality.[4]

When operating in humid conditions, the dehumidification load from the outdoor ventilation air is a much larger percentage of the total cooling load for a DX–DOAS than for a typical commercial air conditioner. Additionally, compared to a typical commercial air conditioner, the amount of total cooling (both sensible and latent[5]) is much greater per pound of air for a DX–DOAS at design conditions (*i.e.,* the warmest/most humid expected summer conditions), and a DX–DOAS is designed to accommodate greater variation in entering air temperature and humidity (*i.e.,* a typical commercial air conditioner would not be able to dehumidify 100-percent outdoor ventilation air to the levels achieved by a DX–DOAS). As discussed further in section III.A.2 of this document, not all unitary DOASes have this dehumidification capability.

On October 26, 2016, ASHRAE published ASHRAE 90.1–2016, which for the first time specified a test standard and efficiency standards for DX–DOASes. ASHRAE 90.1–2016 adopted the integrated seasonal moisture removal efficiency (''ISMRE'') dehumidification efficiency metric and the integrated seasonal coefficient of performance (''ISCOP'') heating efficiency metric, as measured according to the applicable industry standard at the time (ANSI/AHRI Standard 920–2015, ''Performance Rating of DX-Dedicated Outdoor Air System Units'' (''ANSI/AHRI 920–2015'')), and defines a DX–DOAS as a type of air-cooled, water-cooled, or water-source factory assembled product that dehumidifies 100-percent outdoor air to a low dew point and includes reheat that is capable of controlling the supply dry-bulb temperature of the dehumidified air to the designed supply air temperature. ASHRAE 90.1–2016 also established dehumidification and heating standards for DX–DOASes.

The amendment to ASHRAE 90.1 to specify an industry test standard for DX–DOASes triggered DOE's obligations vis-à-vis test procedures under 42 U.S.C. 6314(a)(4)(B), as discussed previously. On October 25, 2019, ASHRAE published an updated version of ASHRAE 90.1 (''ASHRAE Standard 90.1–2019''), which maintained the DX–DOAS provisions as first introduced in ASHRAE 90.1–2016 without revisions.

On February 4, 2020, AHRI published AHRI 920 (I–P)–2020, ''Performance Rating of DX-Dedicated Outdoor Air System Units''. Following this publication, in April 2021, AHRI published AHRI 920 (I–P)–2020 with Addendum 1, ''Performance Rating of DX-Dedicated Outdoor Air System Units'' (''AHRI 920–2020''), which included one minor update to fix an error in section 6.8.2 of the previous version.

On July 7, 2021, DOE published a notice of proposed rulemaking (''NOPR'') pertaining to unitary DOASes. 86 FR 36018 (''July 2021 NOPR''). In the July 2021 NOPR, DOE proposed to establish a definition for unitary DOAS (referred to as ''DX–DOAS'' in the July 2021 NOPR) as a category of commercial package air conditioning and heating equipment and adopt a new test procedure for DX–DOASes (referred to as ''dehumidifying direct-expansion dedicated outdoor air system'' (''DDX–DOASes'') in the July 2021 NOPR) that incorporates by reference the most up to date version of the industry consensus test standard referenced in ASHRAE 90.1–2016 and 90.1–2019 (*i.e.,* AHRI 920–2020).

On December 23, 2021, DOE published a supplemental notice of proposed rulemaking (''SNOPR'') pertaining to unitary DOASes. 86 FR 72874 (December 2021 SNOPR). In the December 2021 SNOPR, DOE presented an updated proposal in response to comments received on the July 2021 NOPR. These updates included the proposal to use the terms unitary DOAS and DX–DOAS instead of the terms ''DX–DOAS'' and ''DDX–DOAS'', respectively, which were used in the July 2021 NOPR[6] (discussed further in section III.A.4 of this document), and several proposals related to the instructions in Appendix F of AHRI 920–2020 regarding testing with, and how to test, specific components (discussed further in section III.F of this document).

The proposed test procedure in the July 2021 NOPR, as revised by the December 2021 SNOPR, would apply to all DX–DOASes for which ASHRAE 90.1–2019 specifies standards, with the

[4] From the June 2018 ASHRAE eSociety Newsletter (Available at: *www.ashrae.org/news/esociety/what-s-new-in-doas-and-refrigerant-research*) (Last accessed May 24, 2021).

[5] Sensible capacity is associated with a change in dry-bulb temperature, expressed in Btu/h. Latent capacity is associated with a change in humidity ratio, expressed in Btu/h.

[6] Throughout the remainder of this final rule, DOE uses the terms unitary DOAS and DX–DOAS when referring to the text and proposals in the July 2021 NOPR instead of the ''DX–DOAS'' and ''DDX–DOAS'' terms that are present in the July 2021 NOPR to avoid confusion between notices, unless otherwise specifically stated. DOE also uses the terms unitary DOAS and DX–DOAS when referring to stakeholder comments received on behalf of the July 2021 NOPR, even if the comments used the terminology proposed in the July 2021 NOPR.

exception of ground-water-source equipment, as discussed in section III.A.1 of the July 2021 NOPR. 86 FR 36018, 36023. More specifically, DOE proposed to update 10 CFR 431.96, ''Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps,'' to adopt a new test procedure for DX–DOASes as follows: (1) incorporate by reference AHRI 920–2020, the most recent version of the test procedure recognized by ASHRAE 90.1 for DX–DOASes, and the relevant industry standards referenced therein; (2) establish the scope of coverage for the test procedure; (3) add definitions for unitary DOAS and DX–DOAS, as well as additional terminology required by the test procedure; (4) adopt the integrated seasonal moisture removal efficiency, as measured according to the most recent applicable industry standard (''ISMRE2''), and integrated seasonal coefficient of performance (''ISCOP2''), as measured according to the most recent applicable industry standard, as energy efficiency descriptors for dehumidification and heating mode, respectively; (5) provide instructions for testing DX–DOASes with certain specific components; and (6) establish representation requirements. DOE also proposed to add a new appendix B to subpart F of part 431, titled ''Uniform test method for measuring the energy consumption of direct expansion-dedicated outdoor air systems,'' (''appendix B'') that would include these new test procedure requirements. In conjunction, DOE proposed to amend Table 1 in 10 CFR 431.96 to identify the proposed appendix B as the applicable test procedure for testing DX–DOASes. DOE tentatively determined that the proposed test procedure would not be unduly burdensome to conduct.

DOE received a number of comments from interested parties in response to the July 2021 NOPR and December 2021 SNOPR. Table I–1 and Table I–2 list the commenters, along with each commenter's abbreviated name used throughout this final rule.

TABLE I–1—INTERESTED PARTIES PROVIDING WRITTEN COMMENTS ON THE JULY 2021 NOPR

Name	Abbreviation	Type
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	IR
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy	Joint Advocates	EA
Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison; collectively, the California Investor-Owned Utilities.	CA IOUs	U
Carrier Corporation	Carrier	M
Emerson Commercial and Residential Solutions	Emerson	M
Madison Indoor Air Quality	MIAQ	M
Northwest Energy Efficiency Alliance	NEEA	EA
Trane Technologies	Trane	M
Keith Rice	Rice	I

EA: Efficiency/Environmental Advocate; IR: Industry Representative; M: Manufacturer; U: Utility; I: Individual.

TABLE I–2—INTERESTED PARTIES PROVIDING WRITTEN COMMENTS ON THE DECEMBER 2021 SNOPR

Name	Abbreviation	Type
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	IR
Appliance Standards Awareness Project, New York State Energy Research and Development Authority	ASAP & NYSERDA	EA
Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison; collectively, the California Investor-Owned Utilities.	CA IOUs	U
Carrier Corporation	Carrier	M
Emerson Commercial and Residential Solutions	Emerson	M
Madison Indoor Air Quality	MIAQ	M
Northwest Energy Efficiency Alliance	NEEA	EA

This final rule addresses the relevant comments received in response to the July 2021 NOPR, except for those already addressed in the December 2021 SNOPR. This final rule also addresses the relevant comments received in response to the December 2021 SNOPR. A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[7]

[7] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for DX–DOASes. (Docket No. EERE–2017–BT–TP–0018, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

II. Synopsis of the Final Rule

In this final rule, DOE is establishing a definition for unitary DOAS as a category of commercial package air conditioning and heating equipment and adopting a new test procedure for a subset of unitary DOASes (*i.e.,* DX–DOASes) consistent with the latest version of the industry consensus test standard specified in ASHRAE 90.1–2019. This test procedure, when effective, applies to all DX–DOASes for which ASHRAE 90.1–2019 specifies standards, with the exception of ground-water-source DX–DOASes, as discussed in section III.A.1 of this final rule. More specifically, DOE is updating 10 CFR 431.96, ''Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps,'' to adopt a new test procedure for DX–DOASes as follows: (1) incorporate by reference AHRI 920–2020, the most recent version of the test procedure recognized by ASHRAE 90.1 for DX–DOASes, and the relevant industry standards referenced therein; (2) establish the scope of coverage for the DX–DOAS test procedure; (3) add definitions for unitary DOASes and DX–DOASes, as well as additional terminology required by the test procedure; (4) adopt ISMRE2 and ISCOP2 as measured according to the most recent applicable industry standard, as energy efficiency descriptors for dehumidification and heating mode, respectively; (5) provide instructions for testing DX–DOASes

with certain specific components; and (6) establish representation requirements. DOE is also adding a new appendix B to subpart F of part 431, titled ''Uniform test method for measuring the energy consumption of dehumidifying direct expansion-dedicated outdoor air systems,'' (''appendix B'') that includes the new test procedure requirements for DX–DOASes. In conjunction, DOE is amending Table 1 in 10 CFR 431.96 to specify the newly added appendix B as the applicable test procedure for testing DX–DOASes. DOE has determined that the adopted test procedure will not be unduly burdensome to conduct. DOE's actions are summarized in Table II.1 and addressed in detail in section III of this document.

TABLE II.1—SUMMARY OF TEST PROCEDURE ACTIONS FOR DX–DOASES

Adopted provisions	Attribution
Incorporates by reference AHRI 920–2020 and certain relevant industry test standards referenced by that standard. AHRI 920–2020 includes: —test methods for DX–DOAS with and without ventilation energy recovery systems (''VERS''); —test operating conditions, including Standard Rating Conditions, simulated ventilation air conditions for optional test methods for DX–DOASes with VERS, supply air target conditions, supply and return airflow rates, and external static pressure; —testing instrumentation and apparatus instructions; —test operating and condition tolerances.	Adopt industry test procedure.
Defines ''unitary DOASes'' as covered equipment that meet the EPCA definition for small, large, or very-large commercial package air conditioning and heating equipment.	Establish equipment coverage.
Defines the scope of coverage of the test procedure, including defining DX–DOASes to distinguish them from other kinds of equipment and a capacity limit based on moisture removal capacity (''MRC'').	Establish scope of test procedure.
Adopts ISMRE2 and ISCOP2 as the seasonal efficiency descriptors for dehumidification and heating mode, respectively, as specified in AHRI 920–2020.	Adopt industry test procedure.
Provides minor corrections and additional instruction consistent with AHRI 920–2020 by: ..... —specifying the external head pressure requirements for DX–DOASes with integral water pumps; —specifying general control setting requirements; —providing a missing definition for a ''non-standard low-static motor,'' necessary for the interpretation of the airflow setting instructions.	Clarify instructions in the industry test procedure.
Provides instructions for testing DX–DOASes with certain specific components. This includes: ..... —a list of specific components that must be present for testing, specified in 10 CFR 429.43; —provisions for testing units with certain specific components, specified in appendix B.	Establish representation requirements.
Specifies representation requirements, including a basic model definition, sampling plan requirements, and use of alternative energy-efficiency determination methods.	Provide for representations of energy efficiency consistent with other commercial air conditioner/heat pump equipment.

The effective date for the test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the test procedures beginning 360 days after the publication of this final rule.

III. Discussion

The following sections discuss DOE's determination to establish unitary DOASes as a category of small, large and extra-large commercial package air conditioning and heating equipment, and to establish a new test procedure for DX–DOASes, a subset of unitary DOASes. This includes summarizing and addressing the relevant comments received in response to specific issues DOE raised in the July 2021 NOPR and December 2021 SNOPR that otherwise have not been addressed.

A. Scope of Applicability

1. Equipment Coverage

As discussed, DOE has determined that unitary DOASes are a category of small, large, and very large commercial package air conditioning and heating equipment and, are therefore, covered equipment under EPCA. (42 U.S.C. 6311(1)(B)–(D)) In the July 2021 NOPR, DOE proposed definitions for unitary DOASes. 86 FR 36018, 36023. DOE proposed to define unitary DOASes as a category of small, large, or very large commercial package air conditioning and heating equipment which is capable of providing ventilation and conditioning of 100-percent outdoor air or marketed in materials (including but not limited to, specification sheets, insert sheets, and online materials) as having such capability. *Id.* This proposed definition is based, in part, on the definition in Section 3.6 of AHRI 920–2020. This proposed definition included all air-cooled, air-source heat pump, and water-cooled equipment, excluding ground-water-source unitary-DOASes.[8] *Id.* DOE notes that the proposed definition included the conjunction ''or'' between the two parts of the definition, *i.e.,* capability to provide ventilation and conditioning of 100-percent outdoor air and marketing highlighting that capability.

The CA IOUs commented that there is ambiguity regarding which standards would apply to equipment that condition 100-percent outdoor air but do not dehumidify to the levels specified, such as makeup air units. The CA IOUs commented that AHRI 920–2020 references, but does not define, ''sensible-only 100-percent outdoor air units.'' The CA IOUs further stated that in response to an informal request for clarification, the Mechanical Subcommittee of the ASHRAE Standing Standards Project Committee 90.1 provided that, based on the industry definition that excludes units with recirculation capability from the industry definition of DX–DOAS, a unit would be subject to either the commercial unitary air conditioner and commercial unitary heat pump (''CUAC'' and ''CUHP'', referred collectively in this notice as ''CUAC/HPs'') or the DX–DOAS efficiency specifications in ASHRAE Standard 90.1, but not both. The CA IOUs also stated that the Mechanical

[8] For water-source heat pump equipment, ASHRAE 90.1 includes three configurations: (1) ground-source, closed loop; (2) groundwater-source; and (3) water-source. However, the EPCA definition for ''commercial package air conditioning and heating equipment'' specifically excludes ground-water-source equipment. (42 U.S.C. 6311(8)(A))

Subcommittee of the ASHRAE Standing Standards Project Committee 90.1 provided that if the application of the unit was for only 100-percent outside air, the DX–DOAS tables were to be used. The CA IOUs asserted that it was understood that the distinction between CUAC/HPs and DX–DOASes would not be evident when the definition for DX–DOAS is updated to include recirculation capability per AHRI 920–2020. The CA IOUs stated that they have requested that AHRI include clear language to distinguish the covered equipment from CUAC/HPs when an addendum to ASHRAE 90.1 is proposed. (CA IOUs, No. 25, pp. 3–4) The CA IOUs requested that DOE provide clarity on the differentiation between CUAC/HPs and DX–DOASes by requiring that equipment that is designed and marketed to operate as either a DX–DOAS or a CUAC/HP meet the standards for both equipment categories, and require that sensible-only unitary DOASes meet the CUAC/HP standards, or alternatively clarify if sensible-only unitary DOASes are unregulated by DOE. (CA IOUs, No. 25, p. 4) For the purpose of this notice, DOE is considering a sensible-only unitary DOAS to be a unitary DOAS that that is not a DX–DOAS.[9]

In response to the July 2021 NOPR, Carrier supported the use of industry standards by DOE and agreed with DOE's proposed definitions for unitary DOAS and DX–DOAS. (Carrier, No. 20, p. 2) In response to the December 2021 SNOPR, Carrier also supported DOE's proposed definitions of DX–DOAS, however, Carrier noted that DOE's proposed definition of unitary DOASes creates a potential overlap between CUAC/HPs and DOASes, and that this may especially be true for CUAC/HPs with economizers. (Carrier, No. 30, p. 2) Carrier stated that many CUAC/HPs with economizers have the ability to close a return air damper and deliver 100-percent outdoor air to the space, fitting the definition of a unitary DOAS. *Id* Similarly, in response to the December 2021 SNOPR, NEEA asserted that the unitary DOAS definition does not sufficiently separate unitary DOASes from other covered equipment, most notably including CUAC/HPs. (NEEA, No. 35, pp. 2–3) NEEA provided two model lines [10] that are listed in DOE's CCMS database for CUAC/HPs, but that advertise their capability or option of providing ventilation and conditioning of up to 100-percent outdoor air. NEEA recommended DOE clarify the current coverage of 100-percent outdoor air equipment in the CFR, and how this is modified by the addition of the unitary DOAS definition. NEEA also recommended DOE clarify if it intends to establish new test procedures and standards for unitary DOASes (DOE assumes NEEA in this instance means unitary DOAS that are not DX–DOAS), and if so, how it would align with DOE's approach for DX–DOASes and CUAC/HPs. (NEEA, No. 35, p. 3)

In response to the December 2021 SNOPR, NEEA also asserted that manufacturers do not always provide enough information in publicly available product materials to differentiate whether a model would meet the DX–DOAS or unitary DOAS definition. (NEEA, No. 35, pp. 3–4) Specifically, they noted several models,[11] separate from those previously recognized by NEEA, which are listed as capable of dehumidifying up to 100-percent outdoor air, but for which information was not readily available (*i.e.,* published MRCs or a description of ''high dehumidification ability'') to differentiate them as DX–DOASes or unitary DOASes. NEEA noted that because DOE is only establishing standards for DX–DOASes and not other unitary DOASes, these definitions could incentivize manufacturers to create products with less dehumidification flexibility to avoid testing and regulatory burden. NEEA requests that DOE clarify how CUAC/HP, unitary DOAS, and DX–DOAS are related.

AHRI and MIAQ asserted that operating conditions as opposed to physical characteristics of a unit generally distinguish between categories of unitary DOASes. (MIAQ, No. 19, p. 2; AHRI, No. 22, p. 5) AHRI also stated that the purpose of typical commercial package air conditioning and heating equipment is to supply air at temperature for comfort cooling of people, whereas a DOAS is designed to provide dehumidified, conditioned air to the building. AHRI further provided that unitary DOAS and other categories of commercial package air conditioning and heating equipment may be equipped with variable speed, indoor fans with many motors and design speed options so it may be possible to apply them to more than one application or for a customer to misapply them. AHRI recommended that the DOE regulations focus on how the units are represented in the market. (AHRI, No. 22, p. 5)

As noted, DOE proposed to define unitary DOAS as a category of small, large, or very large commercial package air conditioning and heating equipment which is capable of providing ventilation and conditioning of 100-percent outdoor air or marketed in materials (including but not limited to, specification sheets, insert sheets, and online materials) as having such capability. 86 FR 72874, 72888. DOE also requested information as to whether there are any additional characteristics not yet considered that could help to distinguish unitary DOASes from other commercial package air conditioning and heating equipment. 86 FR 36018, 36023. However, DOE did not receive any responses to this particular request for comment.

In general, if a unit meets the definition of more than one category of covered equipment, that unit must comply with the requirements applicable for each class of covered equipment.[12] Certain commercial package air conditioning and heating equipment may be capable of providing ventilation and conditioning of 100-percent outdoor air, but are not marketed for such an application. If the DX–DOAS test procedure was applied to such commercial package air conditioning and heating equipment, the results would not reflect the energy efficiency of such equipment during a representative average use cycle because the unit would be tested to conditions not encountered in operation in the field.

DOE expects that many commercial package air conditioning and heating systems are capable of providing ventilation and conditioning of 100-percent outdoor air, for example, CUACs/HPs may be capable of doing this by setting airflow lower than would be used for typical CUAC/CUHP applications, but not all of those same models would be marketed as having such capability. As indicated by the comments from AHRI and MIAQ in their response to the July 2021 NOPR, operating conditions as opposed to physical characteristics of a unit generally distinguish between categories of unitary DOASes. Therefore, marketing materials are a strong indicator of what operating conditions

[9] Sensible-only unitary DOASes are discussed further in section III.A.2 of this document.

[10] NEEA indicated the Daikin Rebel and AAON RQ/RN model lines. (NEEA, No. 35, p. 2)

[11] NEEA indicated the following units: Carrier 62X DOAS, Greenheck RV/RVE ERCH and ERT DOAS, Modine DOAS, and Addison PR Series. (NEEA, No. 35, pp. 3–4)

[12] See *e.g.,* in a final rule for consumer refrigeration products DOE stated that for a product that effectively meets the definitions of two different covered products (*e.g.,* a refrigerator and a freezer), DOE requires such a product be tested and certified as both a refrigerator and freezer. 79 FR 22319, 22343.

the unit is designed for, and what installations are suited for such a unit. As noted previously, the proposed definition would have classified a model as a unitary DOAS *either* if it had the capability to provide ventilation and conditioning of 100-percent outdoor air *or* was marketed as having that capability. After consideration of stakeholder comments, DOE recognizes that this definition would classify most CUAC/HP's as unitary DOASes, even if they are not marketed for 100-percent outdoor air applications. In order to better distinguish these equipment categories, DOE is in this final rule revising the definition for unitary DOAS to mean a category of small, large, or very large commercial package air-conditioning and heating equipment that is capable of providing ventilation and conditioning of 100-percent outdoor air *and* is marketed in materials (including but not limited to, specification sheets, insert sheets, and online materials) as having such capability. Consistent with the comment from AHRI, this definition includes consideration of how a unit is expected to be operated in the field in the determination of whether it is a unitary DOAS.

In order to clarify the equipment coverage of unitary DOASes with respect to other commercial package air conditioning and heating equipment, DOE notes that equipment that is marketed and/or distributed in commerce for both CUAC/CUHP applications and unitary DOAS applications must comply with the requirements applicable to CUAC/HPs *and* they must also comply with the requirements applicable for DX–DOASes, provided that they also meet the DX–DOAS definition as discussed in section III.A.2 of this document. If equipment that meets the DX–DOAS definition is not marketed and distributed in commerce for CUAC/CUHP applications, they would not have to comply with the requirements applicable to CUAC/HPs. DOE notes that to determine whether a unit is distributed in commerce for a certain application, DOE reviews manufacturer literature (*e.g.,* brochures, product data, installation manuals, engineering specifications) sales data, and available material.

2. Scope of Test Procedure

DOE further proposed to define for the purpose of the scope of the proposed test procedure a subset of unitary DOASes that are designed to provide a greater amount of dehumidification, *i.e.,* DX–DOASes. In the July 2021 NOPR, DOE proposed to define DX–DOAS as a unitary dedicated outdoor air system that is capable of dehumidifying air to a 55 °F dew point—when operating under Standard Rating Condition A as specified in Table 4 or Table 5 of AHRI 920–2020 with a barometric pressure of 29.92 in Hg—for any part of the range of airflow rates advertised in manufacturer materials, and has a moisture removal capacity of less than 324 pounds per hour (''lb/h''). 86 FR 36018, 36023.

In the July 2021 NOPR, DOE noted that not all unitary DOASes are designed to dehumidify outdoor air at the most humid expected summer conditions to a level consistent with comfortable indoor conditions, such as a dew point temperature less than 55 °F (*e.g.,* sensible-only unitary DOASes do not have such a design). 86 FR 36018, 36023.

AHRI,[13] MIAQ, and the CA IOUs expressed general concern about the ambiguity regarding the coverage of sensible-only unitary DOAS (AHRI, No. 22, p. 5; MIAQ, No. 19, p. 2; CA IOUs, No. 25, pp. 3–4). MIAQ and AHRI stated that operating conditions, rather than features, differentiate DX–DOAS units from sensible-only unitary DOAS units. (MIAQ, No. 19, p. 2; AHRI, No. 22, p. 5) MIAQ and Carrier commented that DX–DOASes may include a reheat coil (to meet the condition of AHRI 920), whereas sensible-only unitary DX–DOASes will not, and that that sensible-only unitary DX–DOASes are typically designed to cool outdoor air from about 95 °F dry bulb to 75 °F dry bulb at a maximum capacity and design airflow of approximately 550 cfm per ton of cooling capacity. *Id*

As previously discussed, in this final rule DOE is defining DX–DOAS as a category of unitary DOAS that is capable of dehumidifying air to a 55 °F dew point—when operating under Standard Rating Condition A as specified in Table 4 or Table 5 of AHRI 920–2020 with a barometric pressure of 29.92 in Hg—for any part of the range of airflow rates advertised in manufacturer materials, and has a moisture removal capacity of less than 324 lb/h. This is a specific distinction from equipment that would not be able to provide this level of dehumidification for any part of the range of advertised airflow rates, and it is based on operating conditions, aligning with the comments of MIAQ and AHRI. Hence, DOE will maintain this definition in establishing the test procedures for DX–DOASes. DOE notes that any unitary DOAS model that can meet this requirement fits the definition of DX–DOAS, whether or not the model is advertised in manufacturer materials to have the capability of a DX–DOAS, as defined, and will be subject to the DX–DOAS test procedure requirements. In contrast, unitary DOASes that don't meet the definition of a DX–DOAS will not be subject to the DX–DOAS test procedure requirements, but, depending on whether such models have characteristics that also align with other covered equipment (*e.g.,* CUAC/HPs), they may be subject to regulations for those other equipment categories, as discussed in section III.A.1 of this document.

a. Low Dewpoint DX–DOASes

In response to the December 2021 SNOPR, AHRI and MIAQ asserted that DX–DOASes generally fall into three ranges of performance requirements, one which requires dew points around 55 °F (as noted in the comments, the category currently described in AHRI 920–2020), a second which requires dew points of less than 50 °F,[14] and lastly, a third which requires dew points less than 30 °F.[15] (AHRI, No. 34, p. 3; MIAQ, No. 29, p. 3)

AHRI's presentation of the comments regarding the three dewpoint ranges was not fully clear in regards to the equipment that corresponds to the specific ranges. However, it is DOE's understanding that AHRI's comment indicates that the second dewpoint range (less than 50 °F) is served by models having a combination of direct expansion (''DX'') and a low temperature desiccant wheel regenerated with waste heat from the condenser, and that these units will either run lower evaporator temperatures or have desiccant wheels with regeneration fans and higher pressure drop. They also stated that their integrated seasonal moisture removal efficiency (ISMRE) will be lower than the comfort cooling counterparts and their supply air temperature will generally be lower, in the range of 65 °F. *Id.*

Regarding the third range of supply air dew point (less than 30 °F), AHRI and MIAQ stated that that equipment serving such applications are currently being served with a DOAS unit using DX, energy recovery wheels, and low

[13] In response to the July 2021 NOPR, Trane stated that they are in support of the comments that have been submitted by AHRI. (Trane, No. 23, p. 2)

[14] AHRI stated that applications for this second dew point range include chilled beam applications, hospital operating rooms, water treatment plants, pumping stations, packaging facilities, pharmaceutical plants, cold aisles in supermarkets, and food processing plants.

[15] AHRI stated that the application for this third dew point range is ice arenas.

temperature desiccant wheels, and that these units, in addition to being distinguishable from other DOAS models in providing air below a 30 °F dew point, also supply the air at a temperature around 55 °F. *Id.* AHRI and MIAQ also noted that these models often will incorporate a supplemental heater to achieve the desired supply air conditions, and that the application involves return air conditions at 55 °F dry bulb temperature and 35 °F to 40 °F dew point.

AHRI and MIAQ asserted that testing models of the second and third dew point range at the higher dew point specified in AHRI 920–2020 (*i.e.,* 55 °F) is not representative of how these models operate in the field, and that DOE should establish a separate product category for both of these equipment variants, or alternatively, that they should be excluded from the scope of coverage by establishing a floor on the application temperature. (AHRI, No. 34, p. 4; MIAQ, No. 29, p. 3)

DOE's review of the DX–DOAS market has identified a small number of model lines that operate in the third dew point range (less than 30 °F supply air dew point temperature) cited by AHRI and MIAQ. DOE's review of this equipment confirms that it is used for ice arena applications, and that it includes desiccant wheels. (EERE–2017–BT–TP–0018–0036) It is DOE's understanding that this equipment achieves regeneration of its desiccant wheels using introduction of external heat, in some cases electric heat, and in other cases using gas or steam. *Id.* DOE notes that AHRI 920–2020 does not include provision for measurement of external heat addition, particularly if the heat is provided by gas or steam. Therefore, DOE has determined that the equipment serving this third range of supply air dew point cannot be tested appropriately according to AHRI 920–2020, and that testing such units according to AHRI 920–2020 would not ensure test repeatability because of a lack of provisions specifying how to incorporate the external heating of the regeneration air into the test procedure. Hence, DOE concludes that the equipment serving this third range of supply air dew point was not anticipated to be included in the scope of DX–DOAS definition.

However, the equipment in the second supply air dew point range (less than 50 °F but not less than 30 °F) has been described by AHRI and MIAQ as having a combination of DX and a low temperature desiccant wheel regenerated with waste heat from the condenser. DOE notes that AHRI 920–2020 has provisions for testing equipment which uses desiccant wheels that have a regeneration air flow (*See, e.g.,* Figure 1 of AHRI 920–2020, ''DX–DOAS Units Airflow Schematic'', which shows a desiccant wheel and a regeneration airflow path). Hence, DOE concludes that such equipment was intended to be included as part of the scope of DX–DOAS, and would not consider such units to be excluded from the DX–DOAS definition adopted in this final rule.

b. Chilled Water Coil Exclusion

In response to the July 2021 NOPR, DOE received comment from the CA IOUs supporting the exclusion of chilled-water DX–DOASes from the scope of the test procedure, asserting that unitary equipment that uses chilled water as the heat rejection medium does not meet the definition of ''small, large, and very large commercial package air conditioning and heating equipment'' under EPCA. (CA IOUs, No. 25, p. 2)

DOE disagrees with the CA IOUs that DOE proposed to exclude chilled-water DX–DOASes from the scope of the test procedure. In the July 2021 NOPR, DOE noted that although units that use chilled water in the conditioning coil are excluded from the scope of the proposed test procedure, DOE did not propose to exclude DX–DOASes that use chilled-water as a heat rejection source from the scope of the test procedure. 86 FR 36035, 36035–36036. More specifically, in the July 2021 NOPR DOE noted that AHRI 920–2020 includes operating conditions representative of supplying a water-cooled condenser with chilled water, however Section 2 of ANSI/ASHRAE 198–2013 specifically excludes equipment with water coils that are supplied by a chiller located outside of the unit. 86 FR 36018, 36035. DOE tentatively concluded based on stakeholder comment from AHRI and Carrier, that the ANSI/ASHRAE 198–2013 exclusion specifically applies to conditioning coils, rather than condensing coils, because units with chilled water conditioning coils are not DX units (*i.e.,* units that use expansion devices for cooling). 86 FR 36018, 36036. DOE has not received information that would contradict its interpretation discussed in the July 2021 NOPR, and therefore has determined that DX–DOASes that used chilled water for heat rejection (*i.e.,* in condensing coils) are within the scope of DX–DOAS, and that these units are subject to the DX–DOAS test procedure using the cooling tower water conditions specified in Table 4 of AHRI 920–2020. Similarly, as noted in that same discussion in the July 2021 NOPR, DOE has also determined that units that use chilled water in conditioning coils are excluded from the scope of the DX–DOAS test procedure.

3. Capacity Limit

As discussed in the July 2021 NOPR, the upper capacity limit of commercial package air conditioning and heating equipment subject to the DOE test procedures is 760,000 Btu per hour, based on the definition of ''very large commercial package air conditioning and heating equipment.'' 86 FR 36018, 36023. Also as discussed in the July 2021 NOPR, AHRI 920–2020 does not provide a method for determining capacity in terms of Btu per hour, but instead, it specifies a determination of capacity in terms of moisture removal capacity (''MRC''). 86 FR 36018, 36024.

In the July 2021 NOPR, DOE proposed to translate Btu per hour to MRC. *Id.* To translate Btu per hour to MRC, DOE calculated the maximum airflow that could be supplied at a 55 °F dewpoint for Standard Rating Condition A as specified in Table 4 and Table 5 of AHRI 920–2020 by cooling and dehumidifying it with an evaporator with a refrigeration capacity of 760,000 Btu per hour. *Id.* DOE calculated this based on air entering the evaporator at Standard Rating Condition A (95 °F dry-bulb temperature and 78 °F wet-bulb temperature) and air exiting the evaporator at 55 °F dew point and 95-percent relative humidity at a standard barometric pressure of 29.92 in Hg. *Id.* DOE then calculated the MRC that corresponds to those conditions. *Id.* Based on these calculations, DOE proposed to limit the scope of the test procedure for DX–DOASes to units with an MRC less than 324 lb/h when testing to Standard Rating Condition A as specified in Table 4 or Table 5 of AHRI 920–2020, and asked for comment on this proposal. *Id.*

In response to the July 2021 NOPR, AHRI and MIAQ agreed with the proposed MRC limit of 324 lb/h. (AHRI, No. 22, p. 6; MIAQ, No. 19, p. 2) Carrier raised a concern that there may not be third party laboratory facilities available capable of testing DX–DOASes with MRCs as high as 324 lb/h, and suggested that DOE consult AHRI to understand this issue. (Carrier, No. 20, p. 2) In response to the December 2021 SNOPR, AHRI and MIAQ added to their response on this issue that the upper capacity limit of the AHRI certification program is 230 lb/h, and that there may be no existing facilities that can test to DOE's proposed maximum MRC limit. They recommended DOE review lab capabilities before finalizing the upper limit for moisture removal and noted

that the third-party lab AHRI has contracted to conduct certification program testing is building a dedicated DOAS test chamber, however it is not yet complete. *Id.*

As discussed, DOE's proposal to limit the coverage of DX–DOASes to 324 lb/h in the DX–DOAS definition is a conversion from the maximum cooling capacity limit of 760,000 Btu per hour established in EPCA. (42 U.S.C. 6311(8)(D))

DOE notes that Carrier and AHRI did not clearly state whether they recommended that the scope of equipment coverage and/or the test procedure be limited to the capacity range that can currently be tested in third party laboratories. Further, the comments are not definitive regarding the current ability of third-party laboratories to test DX–DOASes with an MRC of up to 324 lb/h, or regarding their potential future capability, in case third-party laboratories upgrade their facilities to accommodate such testing. Additionally, DOE notes that manufacturers do not need to use third-party laboratories to determine representations. Manufacturers may be able to test such models in their own laboratories, or they may also use AEDMs for the purpose of determining performance representations. AEDM validation classes are not restricted by capacity range, and none of the comments suggested that such restriction should be considered. Thus, the comments do not point to any inability of manufacturers to certify DX–DOASes with high MRCs.

For the reasons discussed, DOE is adopting as proposed the capacity limit of 324 lb/h in the definition of DX–DOASes established in this final rule. AHRI recommended two additions 0to the definition for a basic model of DDX–DOAS, such that the definition would read as, ''A basic model for a DDX–DOAS means all units manufactured by one manufacturer within a single equipment class; with the same or comparably performing compressor(s), heat exchangers, ventilation energy recovery system(s) (if present), and air moving system(s), and with a common rated ''nominal'' moisture removal capacity at condition A of AHRI 920.'' AHRI also recommended that the term ''nominal'' be defined as ''products with the same advertised MRC'' so that products are grouped correctly for regulatory purposes.

4. Terminology for Covered Equipment

As previously discussed, in the December 2021 SNOPR, DOE addressed all comments received in response to the July 2021 NOPR related to the terminology used to describe unitary DOASes and DX–DOASes and proposed to modify the terminology proposed initially in the July 2021 NOPR and to instead use the terms unitary DOAS and DX–DOAS. 86 FR 72874, 72878–72879. DOE requested comment on its proposal to use the terms unitary DOAS and DX–DOAS. *Id.*

AHRI and MIAQ supported the definitions and acronym proposed for DX–DOASes, however while they did not object to the term ''unitary DOAS'' as an umbrella term, they noted that it was vague, and encouraged DOE to adopt the term non-dehumidifying DX–DOAS (''ND–DX–DOAS'') for direct expansion sensible-only units [16] that are capable of providing 100-percent outdoor air as a subset of unitary DOAS. (AHRI, No. 34, p. 4; MIAQ, No. 29, p. 3).

DOE notes that the ND–DX–DOAS units described by commenters would fit the description of a unitary DOAS that is not a DX–DOAS. In other words, any unitary DOAS that does not meet the adopted definition of DX–DOAS is a non-dehumidifying DX–DOAS, which are not included in Standard 90.1, AHRI 920–2020, and are therefore not the subject of this test procedure. Accordingly, DOE has determined that it is not necessary to adopt the ND–DX–DOAS terminology at this time as it would be redundant. Therefore, DOE is adopting the terminology proposed in the December 2021 SNOPR (*i.e.,* DOE is adopting the terms ''unitary DOAS'' and ''DX–DOAS'').

B. Crosswalk

As first established in ASHRAE 90.1–2016, ASHRAE 90.1–2019 specifies separate equipment classes for DX–DOASes and sets minimum efficiency levels using the ISMRE metric for all DX–DOAS classes and also the ISCOP metric for air-source heat pump and water-source heat pump DX–DOAS classes. ASHRAE 90.1–2019 specifies that both metrics are to be measured in accordance with ANSI/AHRI 920–2015. ANSI/AHRI 920–2015 specifies the method for testing DX–DOASes, in part, through a reference to ANSI/ASHRAE Standard 198–2013, ''Method of Test for Rating DX-Dedicated Outdoor Air Systems for Moisture Removal Capacity and Moisture Removal Efficiency'' (''ANSI/ASHRAE 198–2013'').

As noted previously, in 2020 AHRI published AHRI 920–2020, which supersedes 920–2015. AHRI 920–2020 represents the most up to date version of AHRI 920 and is the current industry consensus test standard for testing DX–DOASes. AHRI 920–2020 contains multiple revisions to ANSI/AHRI 920–2015. These revisions include, among other things, the following: (1) expanded scope of coverage of the test procedure by no longer imposing an upper limit of 97 lb/h on MRC, thereby making the test procedure applicable to all DX–DOASes subject to standards under ASHRAE 90.1; (2) revised outdoor air dry-bulb temperature conditions, external static pressure (''ESP'') conditions, humidity conditions, and weighting factors for ISMRE and ISCOP, which were redesignated as ISMRE2 and ISCOP2, respectively; (3) a revised test approach that prohibits nonrepresentative over-dehumidification and provides methods to address cycling or staging to achieve average target supply air conditions; (4) the addition of a supplementary cooling penalty when excessive reheating raises supply air dry-bulb temperature above 75 °F in dehumidification mode; (5) removal of a supplementary heat penalty for the efficiency metric ISMRE2 when the supply air dry-bulb temperature is less than 70 °F in dehumidification mode;[17] (6) revised condenser water conditions for water-cooled and water-source heat pump DX–DOASes; (7) added requirements for supply air dew point temperature; [18] (8) added requirements for outdoor coil liquid flow rate; (9) additional test unit, test facility, instrumentation, and apparatus set-up provisions; (10) revised test methods for DX–DOASes equipped with VERS; (11) requirements for relief-air-cooled DX–DOASes and DX–DOASes equipped with desiccant wheels; and (12) included requirements for secondary capacity tests.

As discussed, the energy efficiency standards specified in ASHRAE 90.1 are based on ANSI/AHRI 920–2015 and ANSI/ASHRAE 198–2013. The amendments adopted in AHRI 920–2020 result in changes to the measured efficiency metrics as compared to the results under ANSI/AHRI 920–2015.

[16] As stated in section III.A.1 of this document, for the purpose of this notice, DOE is considering a sensible-only unitary DOAS to be a unitary DOAS that that is capable of providing ventilation and conditioning of 100-percent outdoor air and is marketed in materials as having such capability but is not primarily designed to dehumidify outdoor air (*i.e.,* a unitary DOAS but not a DX–DOAS).

[17] As discussed in section III.D of this final rule, AHRI 920–2020 additionally provides a method for calculating $ISMRE2_{70}$, an optional application metric for the dehumidification efficiency with the inclusion of the supplementary heat penalty.

[18] Dew point is the temperature below which water begins to condense from the water vapor state in humid air into liquid water droplets. Dew point varies with humidity (*e.g.,* a low dew point indicates low humidity and vice versa) and is, therefore, used to specify the humidity of the supply air.

In the July 2021 NOPR, DOE requested comment and data on the development of a crosswalk from the efficiency levels in ASHRAE 90.1 based on ANSI/AHRI 920–2015 to efficiency levels based on AHRI 920–2020. DOE also requested comment on how dehumidification and heating efficiency ratings for a given DX–DOAS model are impacted when measured using AHRI 920–2020 as compared to ANSI/AHRI 920–2015. 86 FR 36018, 36027.

DOE received comment from AHRI, MIAQ, and Trane stating that a crosswalk from ISMRE to ISMRE2 and ISCOP to ISCOP2 is currently under development. (AHRI, No. 22, p. 2; MIAQ, No. 19, p. 2; Trane, No. 23, p. 2) AHRI stated that its members have been working with DOE and the CA IOUs to develop the ISCOP-to-ISCOP2 crosswalk. AHRI commented that it has collected and analyzed data under a non-disclosure agreement to develop this crosswalk, and AHRI intends to make this data available to DOE once its crosswalk analysis is complete. (AHRI, No. 18, pp. 12–13) More specifically, AHRI commented that there is a low correlation between ISMRE and ISMRE2 ratings (approximately 65 percent), and that consequently the ISMRE-to-ISMRE2 crosswalk required more complex modeling to map the relationship between the two metrics. AHRI stated that it has completed the ISMRE-to-ISMRE2 crosswalk analysis, but did not provide the results of the analysis in its comments. AHRI stated that once a consensus is achieved on this crosswalk, AHRI will submit a proposed addendum to the ASHRAE Standing Standards Project Committee 90.1 through the Mechanical Subcommittee for the inclusion of the crosswalked ISMRE2 and ISCOP2 levels in ASHRAE 90.1–2022. (AHRI, No. 22, pp. 3–4, 6)

MIAQ urged DOE to continue working with AHRI and other relevant stakeholders to develop the crosswalk and subsequently support an amendment to ASHRAE 90.1 to adopt AHRI 920–2020, and then complete the rulemaking to adopt AHRI 920–2020 as the Federal test procedure. (MIAQ, No. 19, p. 6)

DOE has engaged with AHRI in the crosswalk being developed by AHRI by attending meetings and sharing DOE data. DOE has also initiated a rulemaking to analyze DX–DOAS energy conservation standards and published a NOPR in the **Federal Register** on February 1, 2022, regarding these standards (February 2022 ECS NOPR). (87 FR 5560, 5575) In the February 2022 ECS NOPR, DOE developed a crosswalk analysis to determine ISMRE2 and ISCOP2 minimum efficiency levels of equivalent stringency to the ISMRE and ISCOP minimum efficiency levels currently published in ASHRAE Standard 90.1. *Id.* Details of DOE's analysis and results can be found in the February 2022 ECS NOPR and the accompanying technical support document. DOE will continue to address any differences in the measured energy efficiency under the most recent industry test procedure as compared to the industry test procedure on which the ASHRAE 90.1 levels are based in the ongoing standards rulemaking, as discussed in the February 2022 ECS NOPR.

C. Harmonization With Industry Standards

AHRI asserted that DOE lacks the authority to adopt AHRI 920–2020 at this time, stating that there is no allowance for DOE to consider a test procedure different from that cited in ASHRAE Standard 90.1 for a test procedure's initial adoption as a national standard. (AHRI, No. 22, p. 2) AHRI further asserted that in order for DOE to deviate from ANSI/AHRI 920–2015, the Department would need to propose the adoption of ANSI/AHRI 920–2015 and justify by clear and convincing evidence each amendment made to arrive at a test procedure equivalent to AHRI 920–2020, which AHRI conceded would be unnecessarily onerous. (AHRI, No. 22, pp. 2–3)

MIAQ similarly asserted that DOE does not have the authority to adopt AHRI 920–2020 as the national test procedure. (MIAQ, No. 19, p. 6) MIAQ requested that DOE wait for AHRI 920–2020 to be adopted in ASHRAE Standard 90.1 and for energy conservation standard levels in ASHRAE Standard 90.1 to be established using the new metrics before finalizing this test procedure rulemaking. (MIAQ, No. 19, p. 6) MIAQ argued that having different metrics cited in ASHRAE Standard 90.1 and in the Federal regulations would cause additional costs for compliance with disharmonized requirements. (MIAQ, No. 19, p. 6) MIAQ reiterated these concerns in response to the December 2021 SNOPR, and it additionally noted that waiting for ASHRAE to adopt standards in ASHRAE Standard 90.1 based on the AHRI 920–2020 test method would establish not only consistent energy efficiency levels and design requirements between ASHRAE Standard 90.1 and the Federal requirements, but comparable metrics as well. (MIAQ, No. 29, p. 2)

Trane argued that DOE must support the current version of AHRI 920 as referenced in ASHARE Standard 90.1 (*i.e.,* AHRI 920–2015), noting that the 2020 version of AHRI 920 has not been adopted and finalized by ASHRAE yet. (Trane, No. 23, p. 1) Trane asserted that adoption of AHRI 920–2020 prematurely would cause confusion in the marketplace, as the metrics are substantially changed from the 2015 version and a correct ''cross walk'' needs to be established to show the change from the two metrics. *Id.*

In contrast, the CA IOUs commented that there would be little value in delaying the finalization of a test procedure for DX–DOASes, because an industry test procedure has already been established with broad stakeholder engagement. (CA IOUs, No. 25, p. 2) Consequently, the CA IOUs supported DOE's proposal to incorporate AHRI 920–2020 by reference, (along with slight modifications) and encouraged DOE to expeditiously finalize the test procedure for DX–DOAS. The CA IOUs stated that DOE was triggered to review the coverage of DX–DOAS equipment as a result of ASHRAE Standard 90.1–2016 (and to adopt standards for DX–DOASes within 18 months of the inclusion of DX–DOAS standards in ASHRAE Standard 90.1–2016). (CA IOUs, No. 25, pp. 1–2) The CA IOUs also stated that AHRI 920–2020 is the industry consensus test procedure for DX–DOAS equipment, which was developed through a collaborative process with a range of stakeholders, including DOE representatives and the CA IOUs, many of whom are also engaged in the process by which ASHRAE Standard 90.1 would be updated to reference AHRI 920–2020. (CA IOUs, No. 25, p. 1)

In response, DOE disagrees with assertions by commenters that it lacks the authority to adopt AHRI 920–2020. As discussed previously, ASHRAE Standard 90.1–2016 for the first time included provisions specific to DX–DOASes. The amendment to ASHRAE Standard 90.1 to specify an industry test standard for DX–DOASes triggered DOE's obligations vis-à-vis test procedures under 42 U.S.C. 6314(a)(4)(B), as outlined previously. With respect to small, large, and very large commercial package air conditioning and heating equipment (of which DX–DOASes are a category), EPCA directs that when the generally accepted industry testing procedures or rating procedures developed or recognized by AHRI or by ASHRAE, as referenced in ASHRAE Standard 90.1, is amended, the Secretary shall amend the DOE test procedure consistent with the amended industry test procedure or rating procedure unless the Secretary determines, by clear and convincing evidence, that to do so would not meet

the requirements for test procedures to produce results representative of an average use cycle and is not unduly burdensome to conduct. (42 U.S.C. 6314(a)(4)(B)).

In this instance, the industry test procedure referenced in ASHRAE Standard 90.1, AHRI 920–2015, has been superseded in the intervening years since DOE was first triggered to review the DX–DOAS provisions of ASHRAE Standard 90.1–2016. As supported by many of the comments that DOE received, including from AHRI itself, DOE has determined, by clear and convincing evidence, that AHRI 920–2015 is not reasonably designed to produce test results which reflect energy efficiency of DX–DOASes during a representative average use cycle and that some components of AHRI 920–2015 are unnecessarily burdensome. The issues associated with the ANSI/AHRI 920–2015 test standard include (1) test outdoor air dry-bulb temperature conditions, ESPs, humidity conditions, and weighting factors for ISMRE and ISCOP are not representative of national-average DX–DOAS operating conditions and were claimed to be impossible to achieve in test laboratories; (2) the test standard includes no specification of supply air dew point for part-load dehumidification test conditions, thus making the test standard flawed as a test for comparing performance of different DX–DOAS models and incentivizing unnecessary over-dehumidification; (3) the use of a supplementary heating penalty that is not representative of many DX–DOAS installations for which internal heat gain is high, and thus reheating up to 70 °F is not required and wastes energy; (4) the excessive burden associated with the requirement to use two airflow rate measurement devices for each airflow path; (5) test methods for DX–DOAS with ventilation energy recovery systems (''VERS'') that were claimed to be impossible to conduct in test laboratories; and (6) no provisions for testing DX–DOAS models with relief-air-cooled refrigeration systems. AHRI itself commented that ANSI/AHRI 920–2015 ''suffers from fatal flaws that have been corrected in the 2020 edition.'' (AHRI, No. 22, p. 2) Were DOE not to adopt AHRI 920–2020, the fatal flaws present in ANSI/AHRI 920–2015 would arguably cause more confusion in the marketplace and burden for manufacturers than, as Carrier suggested, would be caused by DOE adopting AHRI 920–2020. Also, DOE disagrees with AHRI's assertion that DOE must justify by clear and convincing evidence each amendment made to arrive at a test procedure equivalent to AHRI 920–2020. EPCA does not require such an analysis. Rather, EPCA requires that the test procedure, as a whole, be representative of an average use cycle and not unduly burdensome to conduct. DOE has determined, by clear and convincing evidence, that AHRI 920–2015, as a whole, does not meet these criteria. And DOE has determined that AHRI 920–2020, as a whole, is representative of an average use cycle and is not unduly burdensome to conduct.

DOE recognizes that adopting AHRI 920–2020 as the Federal test procedure for DX–DOASes may create some disharmony between the Federal test procedure and the test procedure currently specified in ASHRAE Standard 90.1 for a period of time. However, such disharmony is likely to be brief given the anticipated adoption of AHRI 920–2020 in ASHRAE Standard 90.1–2022 later this year, and such a situation is preferable to the alternative in which DOE would need to reinitiate another rulemaking after this proceeding to amend the Federal test procedure from AHRI 920–2015 to AHRI 920–2020—precisely the same testing standard available for consideration at the present time. Given the passed statutory deadline for this rulemaking, such delay and waste of agency resources is unwarranted, particularly where DOE has undertaken an appropriate crosswalk to migrate to the new metrics. Additionally, DOE notes that commenters' concern regarding a crosswalk and potential market confusion from having Federal standards rely on different metrics than the efficiency levels specified in the current version of ASHRAE Standard 90.1 relate to the establishment of Federal energy conservation standards for DX–DOASes, which DOE is addressing in a separate rulemaking. Finally, DOE notes that manufacturers are not required to use the test procedure to make representations until 360 days after issuance of this final rule, and they are not required to use the test procedure to certify compliance with any energy conservation standards for DX–DOASes until the compliance date established for such standards.

Accordingly, for the foregoing reasons, DOE is incorporating by reference AHRI 920–2020, with the identified modifications, into the Federal test procedure for DX–DOASes because DOE has determined, by clear and convincing evidence, that the industry test procedure specified in ASHRAE Standard 90.1 (AHRI 920–2015) would not produce results that are representative of the energy efficiency of that covered equipment during an average use cycle and would be unduly burdensome to conduct.

D. Efficiency Metrics

As previously mentioned, AHRI 920–2020 includes a dehumidification efficiency metric (ISMRE2) and heating efficiency metric (ISCOP2) for DX–DOASes. The ISMRE2 and ISCOP2 metrics are different from the metrics adopted in ASHRAE 90.1–2016 (ISMRE and ISCOP). The ISMRE2 metric is determined by calculating a weighted average of the four moisture removal efficiency (''MRE'') values measured during each of the four tests performed at the dehumidification Standard Rating Conditions.[19] ISCOP2 is determined by taking a weighted average of the two coefficient of performance (''COP'') values measured during each of the two tests performed at the heating Standard Rating Conditions. Test conditions and weighting factors for the Standard Rating Conditions are specified in Sections 6.1, 6.12, and 6.13 of AHRI 920–2020. In the July 2021 NOPR, DOE proposed to adopt the ISMRE2 and ISCOP2 metrics as specified in AHRI 920–2020. 86 FR 36018, 36028.

NEEA recommended that DOE account for ventilation-only operation (*i.e.,* no heating or cooling demand) for all commercial package air-conditioning and heating equipment, including DX–DOASes. NEEA stated that the proposed efficiency metrics do not account for the energy consumption and losses associated with ventilation-only operation. NEEA recommended that DOE consider non-heating and non-cooling operational modes in the efficiency metric to better account for the effect of enclosure losses (*e.g.,* shell losses, casing leakage, and damper leakage) on whole-package efficiency, asserting that rooftop equipment, including DX–DOASes, may spend most of the time not actively heating or cooling the building, and that enclosure losses occur during this type of operation. (NEEA, No. 24, pp. 2–3)

NEEA further commented that, because the proposed efficiency metrics do not account for ventilation-only operation, the proposed test procedure does not fully capture the potential benefits of measures such as improved

[19] Standard Rating Conditions in AHRI 920–2020 represent full-load and part-load operating conditions for testing DX–DOASes. Standard Rating Condition A represents full-load operation in dehumidification mode, whereas Standard Rating Conditions B–D represent part-load operation in dehumidification mode. Standard Rating Condition E represents full-load operation in heat pump mode at high temperatures, and Standard Rating Condition F represents full-load operation in heat pump mode at low temperatures.

insulation, decreased casing leakage, and decreased damper leakage. NEEA stated that it is aware of DX–DOASes with low-leakage damper and 2-inch double wall foam insulation, whereas it is common to use 1-inch fiberglass batting for other rooftop equipment that is not designed for 100-percent outdoor air. NEEA stated that enclosure losses are driven by natural or forced recirculation of building air through the rooftop unit but indicated that the prevalence of recirculation for DX–DOASes is not known. NEEA recommended that DOE research this to determine whether it is necessary to include ventilation-only operation in the efficiency metrics. (NEEA, No. 24, p. 3)

Regarding non-heating and non-cooling operational modes, including ventilation-only operation, the data provided by NEEA is informative and preliminarily indicates that there may be an opportunity to more fully capture the energy efficiency of DX–DOASes when operating in a mode other than mechanical cooling and heating, such as ventilation, into the test procedure. Evaluation of whether, and to what extent, supply fan use in operating modes other than mechanical cooling and heating in DX–DOASes is addressed will require additional data collection and analysis by the Department. Absent such data and analyses, DOE continues to conclude that AHRI 920–2020 is reasonably designed to produce results reflecting the energy efficiency of DX–DOASes during a representative average use cycle because of the omission of other operating modes. As such, DOE is adopting the ISCOP2 and ISMRE2 metrics specified in AHRI 920–2020.

DOE also received a comment from Rice in response to the July 2021 NOPR regarding the efficiency metrics in AHRI 920–2020. (Rice, No. 26, p. 1) Rice indicated that the method of calculating ISMRE2 using a weighted average of MRE results from the four Standard Rating Conditions in AHRI 920–2020 may not be appropriate. Rice claimed that the calculation of the integrated metric would be correct if, instead, the weighting factors were based on the fractional moisture removal capacity at each Standard Rating Condition.[20] (Rice, No. 26, p. 1–2) Rice also asserted that the method of calculating the integrated efficiency metrics in AHRI 920 would have errors that are magnified for DX–DOASes with variable capacity control, for which the equipment's efficiency may vary widely at different part-load conditions. Rice indicated that this impact was considered for room air conditioners and portable air conditioners, and that DOE did change the proposed weighting method to account for variable-speed room air conditioners. *Id.*

Regarding the test conditions and weighting factors, DOE notes that the test conditions for each of the Standard Rating Conditions in AHRI 920–2020 were developed in part by weather data provided by DOE, and AHRI's review of a Typical Meteorological Year (''TMY'') 2,[21] which was performed with weather data from the National Renewable Energy Laboratory. Additionally, the weighting factors in AHRI 920–2020 were developed to represent the number of hours per year spent at each test condition. AHRI 920–2020 requires that a unit is tested at each of the four dehumidification Standard Rating Conditions when determining the ISMRE2 metric, and that the performance of the unit at each test point (including part-load) is incorporated into the ISMRE2 metric. While individual equipment performance at part-load may vary between different model lines, each unit is tested under the same Standard Rating Conditions that produce results of DX–DOAS efficiency during operation under representative conditions. As discussed by Rice, this approach differs from the approach used for residential room air conditioners and portable air conditioners, however DOE notes that it aligns with the approach taken for other small, large, and very large commercial package air conditioning and heating equipment (*e.g.,* the IEER metric specified in AHRI 340/360).

For the reasons discussed previously, DOE has determined that at this time, the test conditions and weighting factors in AHRI 920–2020 are appropriate for determining the representative performance of DX–DOAS units, and that the resulting ISMRE2 and ISCOP2 values are based on up-to-date weather data and operation hours. DOE recognizes that comments provided by Rice are informative and may suggest the need for DOE to investigate further the approach used to calculate DX–DOAS performance in a future rulemaking. However, without further information, DOE continues to conclude that the test conditions and weighting factors in AHRI 920–2020 produce results reflecting the energy efficiency of DX–DOASes during a representative average use cycle. Therefore, DOE is adopting the test conditions and weighting factors in AHRI 920–2020.

AHRI 920–2020 also provides additional efficiency metrics $ISMRE2_{70}$, COP_{full} and COP_{DOAS} and methods for calculating them. $ISMRE2_{70}$ is an application metric for the seasonal dehumidification efficiency with the inclusion of a supplementary heat penalty. The subscript ''70'' indicates the inclusion of energy use from any supplementary heat that is required to raise the supply air dry bulb temperature to 70 °F. COP_{DOAS} is applicable for heating mode test conditions E and F using the heat pump capacity level that most closely achieves supply air temperature in the range 70 °F to 75 °F (or a weighted average of capacity levels to achieve average supply air temperature in this range) and is calculated without a supplementary heat penalty. COP_{full} is calculated with manufacturer-specified outdoor conditions for DX–DOAS full heat pump capacity level, also without supplementary heat penalty. Additionally, AHRI 920–2020 provides optional application rating test conditions for water-cooled DX–DOASes using the ''Condenser Water Entering Temperature, Chilled Water'' conditions specified in Table 4 of AHRI 920–2020 and for water-source heat pump DX–DOASes using the ''Water-Source Heat Pump, Ground-Source Closed Loop'' conditions specified in Table 5 of AHRI 920–2020.

In the July 2021 NOPR, DOE proposed to adopt these additional efficiency metrics and test conditions to allow for optional representations made using these metrics.[22] 86 FR 36018, 36060 DOE proposed including these application representations to clarify that such representations are not contrary to EPCA requirements that representations regarding energy consumption be made on the basis of DOE test procedures (42 U.S.C. 6314(d)). DOE received no comment on this proposal in response to the July 2021 NOPR.

For the reasons discussed in the July 2021 NOPR and in the preceding paragraph, DOE is establishing these

[20] DOE understands the commenter's term ''fractional moisture removal capacity'' to refer to the ratio between the total moisture removed during times that the conditions are in the range of a given bin to the total moisture removed during the entire dehumidification (cooling) season.

[21] TMY is a widely used type of data available through the National Solar Radiation Database. TMYs contain one year of hourly data that best represents median weather conditions over a multiyear period. The datasets have been updated occasionally; thus, TMY, TMY2, and TMY3 data are available. *See nsrdb.nrel.gov/about/tmy.html* (last accessed 4/28/21).

[22] DOE included a typographical error in the July 2021 NOPR when proposing to adopt ''$ISMRE_{70}$'' to allow for optional representations made using this metric in proposed section 2.2.2(a) of Appendix B. DOE has corrected this in this final rule by adopting ''$ISMRE2_{70}$''.

metrics to allow for optional representations, as enumerated in section 2.2.3 of appendix B.

E. Test Method

1. Definitions

a. ISMRE2, ISCOP2, and VERS

In the July 2021 NOPR, DOE proposed to define ISMRE2 to mean ''a seasonal weighted average dehumidification efficiency for dedicated outdoor air systems, expressed in lbs. of moisture/kWh, as measured according to appendix B.'' 86 FR 36018, 36057. DOE proposed to define ISCOP2 to mean ''a seasonal weighted-average heating efficiency for heat pump dedicated outdoor air systems, expressed in W/W, as measured according to appendix B.'' *Id.* DOE proposed to define VERS to mean ''a system that pre-conditions outdoor ventilation air entering the equipment through direct or indirect thermal and/or moisture exchange with the exhaust air, which is defined as the building air being exhausted to the outside from the equipment.'' *Id.* DOE requested comment on the proposed definitions for ISMRE2, ISCOP2, and VERS. *Id.* at 86 FR 36029.

AHRI, Carrier, and MIAQ agreed with DOE's proposed definitions for ISMRE2, ISCOP2, and VERS. (AHRI, No. 22, p. 6; Carrier, No. 20, p. 3; MIAQ, No. 19, p. 3) Emerson recommended that DOE revise the proposed definition for VERS by removing the prefix ''pre'' from ''pre-condition,'' asserting that whether it is pre-, post-, or in a single step, the conditioning is what is important, and that being overly prescriptive in the definition could limit future technology options. (Emerson, No. 27, p. 2) Emerson reiterated this comment in response to the December 2021 SNOPR, also adding that the wording change is an important detail for desiccant systems, that the test procedure uses a ''black box'' approach to the equipment, not prescribing how the different air flows interact in the equipment. (Emerson, No. 33, pp. 1–2)

DOE notes that the requirement to pre-condition outdoor ventilation air is inherent to the function of VERS in AHRI 920–2020, and how VERS is treated in AHRI 920–2020. Contrary to Emerson's claim that the test procedure uses a ''black box'' approach, the treatment, for example, of air that leaks or is transferred from the return to the supply side of the VERS, or the ''Option 2'' method of test are very much dependent on the way the air flows through the DX–DOAS. Additionally, Section 3.28 of AHRI 920–2020 similarly defines VERS as a system that pre-conditions outdoor air. DOE is not currently aware of VERS that do not pre-condition, and notes that currently, pre-conditioning outdoor air (as opposed to post-conditioning, for example) is commonplace in DX–DOAS models of which DOE is aware. Therefore, DOE is adopting the definition of VERS as proposed and as defined in AHRI 920–2020.

b. Non-Standard Low-Static Motor

In the July 2021 NOPR, DOE noted that AHRI 920–2020 uses the term ''non-standard low-static motor'', however AHRI 920–2020 does not define the term. 86 FR 36018, 36042. DOE proposed to define a non-standard low static motor as a supply fan motor that cannot maintain ESP as high as specified in Table 7 of AHRI 920–2020 when operating at a manufacturer-specified airflow rate and that is distributed in commerce as part of an individual model within the same basic model of a DX–DOAS that is distributed in commerce with a different motor specified for testing that can maintain the required ESP. *Id.* DOE requested comment on this proposed definition. *Id.*

In response to the July 2021 NOPR, the Joint Advocates, the CA IOUs, and Carrier supported DOE's proposed definition for non-standard low-static fan motor. (Joint Advocates, No. 21, pp. 1–2; CA IOUs, No. 25, p. 3; Carrier, No. 20, p. 3) AHRI and MIAQ recommended that DOE include the definition of ''non-standard motor'' from Section D3 of appendix D to AHRI 340/360–2019, instead of introducing a new definition. (AHRI, No. 22, p. 8; MIAQ, No. 19, p. 3)

DOE understands the term ''non-standard motor'' as defined in AHRI 340/360–2019 and the term ''non-standard low-static motor'' in AHRI 920–2020 to differ. Specifically, the term ''non-standard low-static motor'' is used in Sections 6.1.5.2.3 and 6.1.5.2.4 of AHRI 920–2020 to identify a motor that cannot meet certain test requirements for performing a valid test. Specifically, Section 6.1.5.2.3 of AHRI 920–2020 provides that if a fan's maximum speed is too low to satisfy the airflow and ESP requirements within tolerance and the motor is not a non-standard low-static motor, the maximum speed is used, and the airflow measurement apparatus fan is adjusted to achieve the desired ESP. Whereas Section D3 of AHRI 340/360–2019 states that a non-standard motor is an indoor fan motor that ''is not the standard indoor fan motor'' and that is distributed in commerce as part of an individual model within the same basic model, and that the standard indoor fan motor is the motor specified by the manufacturer for testing. In sum, AHRI 340/360–2019 defines a ''non-standard motor'' to identify which motor is not specified by the manufacturer for testing, which has a different meaning than the term ''non-standard low-static motor'' used in AHRI 920–2020.

Without a definition of ''non-standard low-static motor,'' manufacturers may not apply the ''maximum speed'' provisions consistently, and the potential for variation risks results that do not reflect the equipment's representative average energy efficiency or energy use. As such, DOE has determined, that in the absence of a definition of ''non-standard low-static motor,'' the industry test procedure would not meet the statutory requirements of 42 U.S.C. 6314(a)(2)–(3), and that the definition proposed in the July 2021 NOPR is appropriate to adopt. Therefore, in section 2.2.1(a)(i) of appendix B, DOE is establishing a definition for ''non-standard low-static motor'' consistent with the definition proposed in the July 2021 NOPR.

2. General Control Setting Requirements

Requirements for adjustment of unit controls during set-up for testing of a DX–DOAS are addressed in specific Section 6 of AHRI 920–2020. Some examples include the following. Section 5.2, ''Equipment Installation,'' requires that units be installed per manufacturer's installation instructions, Section 5.4.3, ''Deactivation of VERS,'' indicates that operation of the VERS may be deactivated for Standard Rating Conditions C or D if the VERS is capable of being deactivated, and Section 5.5, ''Defrost Controls for Air-Source Heat Pump during Heating Mode,'' provides instructions for setting of defrost controls. However, DOE notes that the test standard provides no general requirements indicating whether control settings can be adjusted as the test transitions through the four Standard Rating Conditions used for testing.

In the July 2021 TP NOPR, DOE noted that manual readjustment of control settings would not generally occur in field operation of DX–DOASes as outdoor air conditions change, but that manual intervention throughout testing may be required (*e.g.,* manually setting the compressor capacity staging for tests using the ''Weighted average method,'' as described in Section 6.9.1 of AHRI 920–2020). 86 FR 36018, 36036–36037. Absent such instruction, the controls could be adjusted as the test transitions through the four Standard Rating Conditions used for testing, which as discussed, would not be representative of the operation of the unit in the field.

Therefore, DOE proposed that all control settings are to remain unchanged for all Standard Rating Conditions once system set-up has been completed, and component operation shall be controlled by the unit under test once the provisions in Section 6 of AHRI 920–2020 (Rating Requirements) are met, except as specifically allowed by the test standard or supplemental test instructions (''STI'').[23] 86 FR 36018, 36037. In the July 2021 NOPR, DOE requested comment on this proposal. *Id.*

In response to the July 2021 NOPR, AHRI, the Joint Advocates, the CA IOUs, Carrier, and MIAQ generally agreed with DOE's proposed requirements for controls settings. (AHRI, No. 22, pp. 7–8; Joint Advocates, No. 21, p. 1; CA IOUs, No. 25, pp. 4–5; Carrier, No. 20, p. 3; MIAQ, No. 19, p. 3) More specifically, the CA IOUs and Joint Advocates stated that this approach would help improve representativeness, and MIAQ agreed with DOE that manually setting the compressor capacity staging for tests using the ''Weighted average method,'' as described in Section 6.9.1 of AHRI 920–2020, is an allowed intervention to address a unit cycling operation between two compressor stages to target supply air dew point over the average of a time period. (Joint Advocates, No. 22, pp. 7–8; CA IOUs, No. 25, p. 4–5; MIAQ, No. 19, p. 3)

DOE has determined, that absent instruction for the control settings to be fixed during testing, the industry test procedure would not meet the statutory requirements of 42 U.S.C. 6314(a)(2)–(3) and is, therefore, adopting such instruction. DOE has determined that the inclusion of instructions that control settings be fixed during testing, except as specifically allowed by the test procedure or STI, would improve the representativeness of the test procedure. Therefore, DOE is adopting the supplemental instructions proposed in the July 2021 NOPR regarding general control settings in section 2.2.1(b)(i) of appendix B.

In response to the July 2021 NOPR, AHRI also recommended that certain exceptions (in addition to those specified in the STI) should be addressed where intervention may be universally required. (AHRI, No. 22, pp. 7–8) Specifically, AHRI indicated that manual intervention may be necessary for: compressor capacity staging for tests using the interpolation approach, manual override for condensing unit cyclic fan operation, and adjustment of customer controls with tolerance deviations greater than those specified in AHRI 920–2020. AHRI commented that manual override of condenser fans would be consistent with Section 6.1.1.3 of AHRI Standard 340/360–2019, ''Performance Rating of Commercial and Industrial Unitary Air-conditioning and Heat Pump Equipment'' (''AHRI 340/360–2019''), and that override controls should not be included in the total power consumption measurement. AHRI also commented that adjustment of the supply air dew point temperature dead band may be required to achieve steady state operation and should be permitted. *Id.*

DOE has determined that if any form of manual intervention is required during testing that is not addressed by AHRI 920–2020, including the intervention required to address the scenarios described by AHRI, specifications for such intervention should be included in the STI. Furthermore, DOE has concluded that a universal approach specified in the test procedure would not be appropriate for all DX–DOAS units because proper control adjustment may vary from model to model, requiring action unique to a specific model. Therefore, DOE has determined to not specify further instructions for setting control settings during testing.

3. Test Operating Conditions

In the July 2021 NOPR, DOE noted that through proposing to adopt the test procedure in AHRI 920–2020, DOE would adopt the test operating conditions specified in AHRI 920–2020 for DX–DOAS units, and that these include: (1) Standard Rating Conditions (Tables 4 and 5 of Section 6 of AHRI 920–2020, as enumerated in section 2.2.1(c) of appendix B, which references Section 6 of AHRI 920–2020 omitting Sections 6.1.2 and 6.6.1); (2) simulated ventilation air conditions for testing under Option 2 for DX–DOASes with VERS (Section 5 of AHRI 920–2020 (which includes Section 5.4.1.2 *Option 2*), as enumerated in section 2.2.1(b) of the proposed appendix B, which references Section 5 of AHRI 920–2020); (3) atmospheric pressure (Section 5 of AHRI 920–2020 (which includes Section 5.10 *Atmospheric Pressure*), as enumerated in section 2.2.1(b) of the proposed appendix B); (4) target supply air conditions (Section 6 of AHRI 920–2020 (which includes Section 6.1.3 *Supply Air Dewpoint Temperature* and Section 6.1.4 *Supply Air Dry Bulb Temperature*), as enumerated in section 2.2.1(c) of the proposed appendix B); (5) external static pressure (Section 6 of AHRI 920–2020 (which includes Section 6.1.5.6 *External Static Pressure*), as enumerated in section 2.2.1(c) of the proposed appendix B); and (6) target supply and return airflow rates (Section 6 of AHRI 920–2020 (which includes Section 6.1.5 *Supply and Return Airflow Rates*), as enumerated in section 2.2.1(c) of the proposed appendix B). 86 FR 36018, 36030–36031.

In the July 2021 NOPR, DOE further discussed the following topics related to the test operating conditions DOE proposed to adopt: (1) target supply and return airflow rates; (2) units with cycle reheat functions; (3) target supply air dry-bulb temperature; (4) target supply air dew-point temperature; and (5) units with staged capacity control. 86 FR 36018, 36031–36033. Aside from the comments addressed elsewhere in this final rule, DOE did not receive additional comments regarding these topics and the proposals therein. For the reasons discussed in the July 2021 NOPR, DOE is adopting the test operating conditions in AHRI 920–2020 that were presented in the July 2021 NOPR (*i.e.,* the conditions summarized previously in this section), as enumerated in sections 2.2.1(b) and 2.2.1(c) of appendix B.

4. Break-In Period

In the July 2021 NOPR, DOE noted that Section 5.6 of AHRI 920–2020 includes a provision that the break-in is not to exceed 20 hours, and DOE proposed to adopt this provision through reference to AHRI 920–2020. 86 FR 36018, 36030. DOE also noted that the proposed break-in provision aligns with the test procedures for other commercial package air conditioners and heat pumps. *Id.* DOE received no further comment on this topic in response to the July 2021 NOPR.

Since the publication of the July 2021 NOPR, DOE has determined that the requirements for specification of break-in may not be clear in the proposed test procedure. Although, Section 5.6 of AHRI 920–2020 states that ''the break-in conditions and duration shall be specified by the manufacturer,'' AHRI 920–2020 does not clarify where the manufacturer should specify that information. DOE notes that AHRI 340/360–2022 specifically states that the break-in should be conducted using the ''manufacturer-specified'' duration and conditions and defines ''manufacturer-specified'' as information provided by the manufacturer through manufacturer's installation instructions. AHRI 920–2020 uses the term ''manufacturer-specified'' in multiple locations throughout the standard,

[23] ''STI'' is defined in AHRI 920–2020 as additional instructions provide by the manufacturer and certified to the U.S. DOE. This final rule does not adopt certification or reporting requirements for DX–DOASes—such requirements will instead be proposed in a separate rulemaking.

including in Section 5.6 when describing the break-in conditions and duration,[24] however it does not define the term. DOE notes that Section 3.14 of AHRI 920–2020 does however contain a definition for ''manufacturer's installation instructions.'' Therefore, to clarify what is meant in AHRI 920–2020 when the term ''manufacturer-specified'' is used, DOE is establishing a definition for ''manufacturer-specified'' in section 2.2.1(a)(ii) of appendix B. This definition is the same used in AHRI 340/360–2022 (*i.e.,* Information provided by the manufacturer through manufacturer's installation instructions). Additionally, DOE is clarifying in section 2.2.1(b)(ii) of appendix B that the break-in conditions and duration specified in Section 5.6 of AHRI 920–2020 shall be ''manufacturer-specified'' and therefore shall be the conditions and duration included in the manufacturer's installation instructions, as defined in Section 3.14 of AHRI 920–2020.[25] DOE notes that the manufacturer's installation instructions includes the manufacturer's supplemental testing instructions (''STI''), because the STI definition is specified in Section 3.14.1 of AHRI 920–2020, and is therefore nested within the manufacturer installation instructions definition.[26] Hence, DOE is adopting the maximum 20-hour break-in provision in the DX–DOAS test procedure through reference to Section 5.6 of AHRI 920–2020, as enumerated in section 2.2.1(b) of appendix B, with the clarifications previously mentioned in this paragraph.

5. Ventilation Energy Recovery Systems

As discussed, DX–DOASes include units that provide pre-conditioning of outdoor air by direct or indirect transfer with return/exhaust air using an enthalpy wheel, sensible wheel, desiccant wheel, plate heat exchanger, heat pipes, or other heat or mass transfer apparatus. These pre-conditioning features are broadly referred to as VERS, and ASHRAE 90.1–2016 and 90.1–2019 define separate equipment classes and efficiency levels for DX–DOASes with VERS.

With regard to the test procedure, Section 5.4 of AHRI 920–2020 specifies testing requirements for DX–DOASes equipped with VERS. Section 5.4.1 of AHRI 920–2020 specifies that units equipped with VERS can be tested using either one of two options: ''Option 1'' or ''Option 2''. In general, Option 1 requires operating the DX–DOAS unit with VERS as it would operate in the field, maintaining the appropriate return air and outdoor air conditions for airflows entering the unit, and operating the VERS to provide energy recovery during the test (*see* Section 5.4.1.1 of AHRI 920–2020).[27] In addition to specifying the outdoor air dry-bulb temperature and humidity conditions, Table 4 and Table 5 of AHRI 920–2020 specify return air inlet conditions that are applicable to DX–DOASes with VERS. Section C2.4 in appendix C of AHRI 920–2020 also specifies that the return air be ducted into the unit from a separate test room maintaining the required return air inlet conditions.

Option 2 involves setting the conditions of the air entering the unit so as to simulate the conditions that would be provided by the VERS in operation (*see* Section 5.4.1.2 of AHRI 920–2020).[28] Option 2 uses energy recovery device performance ratings based on AHRI 1060 (I–P)-2018 (''AHRI 1060–2018'') to calculate the air dry-bulb temperature and humidity conditions that would be provided by the energy recovery device. AHRI 1060–2018 references ANSI/ASHRAE 84–2013, ''Method of Testing Air-to-Air Heat/Energy Exchangers,'' (ANSI/ASHRAE 84–2013) (approved by ASHRAE on January 26, 2013) for conducting the test. These industry test standards provide a method for rating the performance of VERS in terms of sensible and latent effectiveness. DOE also notes that the performance ratings for energy recovery devices certified using AHRI 1060–2018 are listed in AHRI's directory of certified product performance.[29]

The operating conditions specified in AHRI 1060–2018 may be different than the operating conditions specified for testing DX–DOAS (*i.e.,* airflow rate, which subsequently affects factors such as transfer/leakage airflow [30]). Hence, section C4 of AHRI 920–2020 provides methods to adjust, for the DX–DOAS operating conditions, the effectiveness values for sensible and latent transfer measured using AHRI 1060–2018. Section C4 of AHRI 920–2020 also provides default values for sensible effectiveness and latent effectiveness. These can be used in cases where performance rating information based on AHRI 1060–2018 is not available for a VERS, or the rotational speed for an energy recovery wheel has been changed from the speed used to determine performance ratings using AHRI 1060–2018.

The Option 2 approach would reduce test burden for most test laboratories by reducing the number of test rooms required as compared to conducting tests using Option 1. Because the outdoor ventilation air and return air would be maintained at the same conditions, there would be no transfer of heat or moisture in the VERS, nor any change of VERS-outlet supply air conditions associated with transfer or leakage of return air to the supply air plenum. In addition, testing using Option 2 is conducted with all components operating (*e.g.,* with an energy recovery wheel rotating, or with the pump of a glycol-water runaround loop activated), such that all measurements would be representative of the pressure drops and power consumption associated with the VERS. This approach avoids separate testing to

[24] Section 5.6 of AHRI 920–2020 states the following: Manufacturers may optionally specify a ''break-in'' period to operate the equipment under test prior to conducting the test. If an initial break-in period is required to achieve performance, the break-in conditions and duration shall be specified by the manufacturer, but shall not exceed 20 hours in length. No testing per Section 6 shall commence until the manufacturer-specified break-in period is completed. Each compressor of the unit shall undergo this ''break-in'' period.

[25] Section 3.14 of AHRI 920–2020 defines the manufacturers installation instructions as the following: ''Manufacturer's documents that come packaged with or appear in the labels applied to the unit(s). Online manuals are acceptable if referenced on the unit label or in the documents that come packaged with the unit. All references to ''manufacturer's instructions,'' ''manufacturer's published instructions,'' ''manufacturer's installation instructions,'' ''manufacturer's published recommendations,'' ''manufacturer installation and''.

[26] Section 3.14.1 of AHRI 920–2020 defines STI as the following: Additional instructions provided by the manufacturer and certified to the United States Department of Energy (DOE). STI shall include (a) all instructions that do not deviate from MII but provide additional specifications for test standard requirements allowing more than one option, and (b) all deviations from MII necessary to comply with steady state requirements. STI shall provide steady operation that matches to the extent possible the average performance that would be obtained without deviating from the MII. STI shall include no instructions that deviate from MII other than those described in (b) of this document.

[27] The Option 1 test method includes additional specificity to the test room configuration for testing DX–DOAS with energy recovery by allowing use of the three-chamber approach in addition to the example configuration provided in the current industry consensus test standard, in which the outdoor room is conditioned to both the required outdoor dry-bulb and humidity conditions.

[28] Option 2 is applicable for DX–DOASes for which a VERS provides the initial outdoor ventilation air treatment. DX–DOAS units with VERS that provide conditioning downstream of the conditioning coil could not be tested using Option 2, since this option addresses VERS pre-conditioning only upstream of the conditioning coil. Such units would need to be tested using Option 1.

[29] AHRI's directory of certified product performance for air-to-air energy recovery ventilators can be found at *www.ahridirectory.org/ahridirectory/pages/erv/defaultSearch.aspx.*

[30] DX–DOASes with energy recovery wheel VERS may experience air transfer and leakage from the outdoor air path to the exhaust air (outdoor air transfer and leakage) and return air to the supply air (return air transfer and leakage).

measure power input of auxiliary components or of the exhaust air fan.

In the July 2021 NOPR, DOE discussed its proposals regarding testing units with VERS, including how the following topics are treated in AHRI 920–2020: exhaust air transfer and leakage, purge angle setting, and target return airflow rate. 86 FR 36018, 36037–36040. DOE tentatively concluded that AHRI 920–2020 addressed each of these topics appropriately; therefore, DOE proposed to adopt Option 1 and Option 2, as specified in AHRI 920–2020. *Id.*

In response to the July 2021 NOPR, the CA IOUs commented that AHRI 1060 evaluates standalone heat exchanger performance only and encouraged DOE to evaluate the alignment between heat exchanger performance based on AHRI 1060 and whole system performance to assess the representativeness of the Option 2 approach. (CA IOUs, No. 25, p. 2)

NEEA commented that it supports the allowance of Option 2 as a less burdensome test method but encouraged DOE to validate the representativeness of the Option 2 test method through laboratory testing or field data. (NEEA, No. 24, p. 2) NEEA suggested that DOE consider a similar approach for other commercial package air-conditioning and heating equipment as a path to consider the energy savings benefits of VERS without adding testing burden. *Id.*

DOE tested a single DX–DOAS unit according to both Option 1 and Option 2 and has analyzed the difference between each option. DOE found that the measured ISMRE2 values differed by 0.1 (*i.e.,* 6.8 ISMRE2 with option 1 compared to 6.7 ISMRE2 with option 2), indicating a small level of variation when using either option.

Based on DOE test data, and lack of data indicating that option 2 is not representative of an average-use cycle, DOE is adopting the two options (*i.e.,* Option 1 and Option 2) for testing DX–DOASes with energy recovery, as provided in Section 5.4.1 of AHRI 920–2020 (as enumerated in section 2.2.1(b) of the proposed appendix B).

In response to the December 2021 SNOPR, the CA IOUs added to their comments regarding Option 2, indicating that, while they still support its use, they highlight a concern regarding AHRI's certification program for verifying VERS ratings developed based on AHRI 1060–2018. (CA IOUs, No. 31, pp. 2–3) Specifically, while ratings for VERS are allowed under the AHRI certification program for a wide range of conditions as specified in Table 1 of AHRI 1060–2018, the verification process associated with AHRI's certification program focuses on outdoor air entering conditions more narrowly focused on the Initial Summer and Initial Winter Verification Zones illustrated in Figure 1 of ''AHRI ERV Operations Manual, January 2022'' (AHRI ERV OM''). The Summer Zone is bounded by a dry bulb temperature range from 90 °F to 100 °F, lower humidity bound of 110 grains per pound of dry air, and upper humidity bound of 80 °F wet bulb temperature. It is DOE's understanding that verification tests focus more narrowly than the allowed range of rating conditions because laboratory determination of VERS sensible, latent, and total energy recovery effectiveness is not sufficiently precise to allow accurate measurement when entering outdoor conditions are closer to the entering return air condition. As these conditions get closer to each other, the temperature and humidity reduction in the air as it passes through the VERS approach the uncertainty of the temperature and humidity measurement. Hence, verification of rated effectiveness levels is most accurate if conducted for hot moist summer conditions and cold dry winter conditions, as is prescribed by the AHRI ERV OM. While there may be concerns that ratings of Option 2 DX–DOAS measurements for test conditions B, C, and D (for which temperature and humidity differences are less that would be used for AHRI verification of VERS performance) do not produce results which are comparable to ratings of Option 1, the tests DOE conducted comparing Option 1 and Option 2 measurements provide some assurance that using AHRI 1060 ratings is a reasonable approach to conducting Option 2 tests.

6. Defrost Energy Use for Air-Source Heat Pump

DX–DOAS defrost operation has an impact on efficiency in the field because of the energy use associated with defrost and because a unit cannot continue to provide heating during defrost operation, thereby reducing time-averaged capacity. Therefore, consideration of defrost could provide a more field-representative measurement of performance. DOE notes that tests conducted at 35 °F dry-bulb temperature for consumer central air conditioning heat pumps (which are air-source) consider the impacts of defrosting of the outdoor coil in the energy use measurement (see 10 CFR part 430, subpart B, appendix M, section 3.9), while defrost performance is not addressed in ANSI/ASHRAE 198–2013 or AHRI 920–2020.

In the July 2021 NOPR, DOE acknowledged challenges in defrost field operation for DX–DOASes. Preventing cold outdoor air from being brought into the supply air stream during a defrosting sequence (when the DX–DOAS cannot operate as a heat pump) would require interruptions to the supply airflow, which is inconsistent with building code requirements to provide a continuous supply of ventilation air for most DX–DOAS applications. 86 FR 36018, 36036. DOE also noted that AHRI 920–2020 addresses defrost in another fashion, namely by providing in Section 5.5 that defrost control settings specified by the manufacturer in installation instructions may be set prior to heating mode tests in order to achieve steady-state conditions during the heating mode tests, and that if these settings fail to prevent frost accumulation during the heating mode tests (resulting in unsteady conditions), then the manufacturer would need to seek a waiver from the test procedure to obtain an alternate method of test from DOE pursuant to 10 CFR 431.401. Additionally, DOE noted that Section 5.5 of AHRI 920–2020 also specifies that the Standard Rating Condition F heating mode test (which represents low temperature environmental conditions where frosting is likely) is optional to conduct, and if the Standard Rating Condition F test is not conducted, a default COP of 1.0 (corresponding to electric resistance heating) is assigned at this rating point instead. Therefore, DOE tentatively concluded that the test method set forth in Section 5.5 of AHRI 920–2020 for defrost controls for air-source heat pump DX–DOASes during heating mode offers a reasonable and workable approach, and that due to the lack of sufficient information on how air-source heat pump DX–DOAS units operate under frosting conditions, DOE would not propose to include any provisions for including the defrost energy of DX–DOAS air-source heat pumps. *Id.*

DOE received no comments on this topic in response to the July 2021 NOPR. For the reasons discussed in the prior paragraph and in the July 2021 NOPR, DOE is adopting the provisions of AHRI 920–2020 Section 5.5, as enumerated in section 2.2.1(b) of the proposed appendix B and is not establishing provisions for including defrost energy in the DX–DOAS test procedure.

7. Return External Static Pressures

In the July 2021 NOPR, DOE proposed to adopt the ESP requirements set forth in AHRI 920–2020, which includes the return air ESP requirements specified in Table 7 of AHRI 920–2020. 86 FR 36018,

36040. DOE received comment from the CA IOUs stating that they supported the adoption of the minimum ESPs provided in AHRI 920–2020 but that the minimum return ESPs appeared to be unrealistically high, especially for equipment with airflow below 900 scfm. (CA IOUs, No. 25, p. 3) The also CA IOUs asserted that changing the minimum ESPs for the return air stream would only affect the exhaust fan power of DX–DOASes with VERS and would likely have little impact on the representativeness of the metric. *Id*

DOE did not receive any data supporting the CA IOUs assertion that return air ESPs are unrealistically high, or any justification supporting their claim that ESPs appear to be unrealistically high. Absent further indication that the return air ESPs specified in AHRI 920–2020 are inappropriate and based on the CA IOUs comment that changing the minimum ESPs would likely have little impact on the representativeness of the metric, DOE concludes that the return air ESPs meet the statutory requirements of 42 U.S.C. 6314(a)(2)–(3). As such, DOE is adopting the ESP requirements in AHRI 920–2020 through reference to Section 6 (Rating Requirements) of AHRI 920–2020 in section 2.2.1(c) of appendix B.

8. Tolerances for Supply and Return Airflow and External Static Pressure

In the July 2021 NOPR, DOE proposed to adopt the test condition and operating tolerances for airflow and ESP specified in Section 6.1.5 of AHRI 920–2020. 86 FR 36019, 36014. Specifically, DOE noted that Section 6.1.5 of AHRI 920–2020 specifies airflow test condition tolerances of ±3 percent of the manufacturer-provided airflow rate for all DX–DOASes when setting the airflow, provided that this airflow rate meets the supply air dew point temperature requirement, and that for setting the return airflow rate, Section 6.1.5 of AHRI 920–2020 specifies the same test condition tolerances as for supply airflow rate, except that for return airflow rate the target is equal to the measured supply airflow rate. *Id.* DOE noted that ANSI/ASHRAE 198–2013 provides a 5-percent operating tolerance directly on the airflow rate, Table 9 of AHRI 920–2020 provides a 5-percent operating tolerance for airflow rate in the form of airflow nozzle differential pressure. *Id.* DOE tentatively determined that the airflow operating tolerance approach in AHRI 920–2020 is preferable because the airflow nozzle differential pressure provides a more direct indication of the airflow variation, since airflow is calculated based on this value. *Id.* These operating tolerances, in addition to the condition tolerances for setting airflow, would maintain repeatable and reproducible results while ensuring that testing is representative of field use.

DOE did not receive any comments regarding DOEs proposal in the July 2021 NOPR. For the reasons discussed in the prior paragraph and in the July 2021 NOPR, DOE is establishing the test condition and operating tolerances for airflow and ESP specified in Section 6.1.5 of AHRI 920–2020, as enumerated in section 2.2.1(c) of the proposed appendix B.

9. Secondary Dehumidification and Heating Capacity Tests

The measurement of dehumidification and heating performance of DX–DOASes is based on measurements of airflow rate, temperature, and humidity, which have uncertainties associated with them. Thus, a secondary test method may be essential to confirm the accuracy of the primary test method. Commercial package air-conditioners and heat pumps with cooling capacity less than 135,000 Btu/h are required to undergo a secondary test to verify the cooling or heating capacity and energy efficiency results (*See, e.g.,* ANSI/ASHRAE 37–2009 Section 7.2.1, which is referenced by appendix A to subpart F of 10 CFR part 431). ANSI/ASHRAE 198–2013 does not specify a secondary test method for verifying the dehumidification and heating capacity of DX–DOAS, but Section 6.7 of AHRI 920–2020 does specify secondary tests.

In the July 2021 NOPR, DOE noted that Section C5.1 of AHRI 920–2020 includes a condensate-based test method as a secondary measure of dehumidification capacity. 86 FR 36018, 36041. DOE noted that this method measures the weight of the condensate (*i.e.,* water vapor in the outdoor ventilation air that condenses on the conditioning coil and is removed from the air) collected during the dehumidification test and uses it to calculate a secondary measure of MRC, and that this secondary measure of MRC is then compared to the primary MRC measurement, which is based on supply and outdoor ventilation airflow and air condition measurements. DOE noted that AHRI 920–2020 requires this secondary measure of MRC for all dehumidification tests, and comparison to the primary measure of MRC at Standard Rating Condition A, and that this requirement is for all DX–DOAS units that: (a) do not use condensate collected from the dehumidification coil to enhance condenser cooling or include a secondary dehumidification process for which the moisture removed from the supply air stream is not collectable in liquid form, and (b) either are not equipped with VERS or are equipped with VERS and tested using Option 2 (*see* Section C5.1 of AHRI 920–2020). Additionally, DOE noted that AHRI 920–2020 does not require a secondary dehumidification capacity measurement for DX–DOAS units equipped with VERS that are tested using Option 1, and that DOE understands that this is because: (a) no viable method has been developed and validated that appropriately accounts for the water vapor that transfers between air streams of an energy recovery wheel, and (b) the test burden of accounting for moisture in the exhaust air stream would be excessive. Therefore, DOE proposed to adopt the secondary capacity test measurements specified in AHRI 920–2020 (Section C5.1 *Dehumidification Capacity Verification*), including the cooling condensate secondary test measurement discussed previously.

For DX–DOAS units with energy recovery tested using Option 2, as previously discussed in section III.E.5 of this document, the test is conducted by setting the conditions of the air entering the unit (at both the outdoor air inlet and return air inlet) to simulate the conditions that would be provided by the energy recovery device in operation. As a result, the moisture removal (in dehumidification mode) or heating (in heating mode for heat pump DX–DOAS) measured during the Option 2 primary and secondary capacity tests reflects only the moisture removed or heating by the conditioning coil. The MRC or q_{hp} for the DX–DOAS is calculated by adjusting the measured moisture removal or heating for the primary test to account for the total moisture removal or heating by the energy recovery device and the conditioning coil. Because the moisture removal or heating capacity measured for the primary and secondary tests are based on the simulated test conditions, Sections 6.9 and 6.10 of AHRI 920–2020 use these measured values for the secondary capacity verification under Option 2. In the July 2021 NOPR, DOE proposed to adopt these requirements specified in AHRI 920–2020 (Section 6.9 *Moisture Removal Efficiency Ratings* and Section 6.10 *Heating Capacity*).

DOE did not receive any comment on these proposals. For the reasons discussed in the prior paragraph and in the July 2021 NOPR, DOE is establishing the condensate-based secondary capacity measurement requirements as proposed in the July 2021 NOPR through reference to Section 6 of AHRI 920–2020, as enumerated in section 2.2.1(c) of appendix B.

10. Water Pump Effect

As part of the July 2021 NOPR, DOE noted that Section 6.1.6.4 of AHRI 920–2020 includes an equation for calculating the ''water pump effect,'' which is an estimate of the energy consumption of non-integral water pumps (*i.e.,* pumps that are not part of the DX–DOAS unit and whose power consumption would, therefore, not already be part of the measured power). 86 FR 36018, 36034. The calculation at Section 6.1.5.4 of AHRI 920–2020 applies the water pump effect to all water-cooled and water-source units. DOE noted that for pumps that are integral to the DX–DOAS, the total pump effect does not need to be calculated because the power for these pumps would be measured as part of the main DX–DOAS power measurement, and that currently, the number of DX–DOAS models on the market with integral pumps is very limited. *Id.*

In the July 2021 NOPR, DOE also noted that AHRI 920–2020 does not explicitly state the amount of external head pressure [31] to use when testing DX–DOASes with integral pumps, and that the calculation of the water pump effect for DX–DOASes without integral pumps specified AHRI 920–2020 includes a fixed adder of 25 Watts per gallon per minute based on 20 feet of water column of external head pressure. 86 FR 36018, 36034. DOE tentatively determined that the external head pressure value specified for DX–DOASes without integral pumps would be appropriate for DX–DOASes with integral pumps, and that specifying an external head pressure for units with integral pumps is necessary to ensure test repeatability because the external heat pressure will impact the pump power output. *Id.* Therefore, DOE proposed to include additional specifications in the DOE test procedure that DX–DOASes with integral pumps be configured with an external head pressure equal to 20 feet of water column (*i.e.,* the same level of external head pressure used in the calculation of the pump effect for DX–DOASes without integral pumps). 86 FR 36018, 36035. In addition, DOE proposed a condition tolerance [32] of up to 1 foot of water column greater than the 20-foot requirement (which equates to 5 percent), which is equivalent to the condition tolerance on air side ESP in Table 9 of AHRI 920–2020 (*i.e.,* .05 inch of water column greater than the target ESP, which is around 1 inch of water column). *Id.* Similarly, DOE proposed an operating tolerance [33] of up to 1 foot of water column, which is equivalent to the operating tolerance on air side ESP in Table 9 of AHRI 920–2020 (*i.e.,* 0.05 inch of water column). *Id.*

In the July 2021 NOPR, DOE requested comment on its proposal to require that water-cooled and water-source DX–DOASes with integral pumps be set up with an external pressure rise equal to 20 feet of water column with a condition tolerance of −0/+1 foot and an operating tolerance of 1 foot. *Id.*

AHRI, the Joint Advocates, and MIAQ supported DOE's proposed requirements for DX–DOASes with integral water pumps. (AHRI, No. 22, p. 7; Joint Advocates, No. 21; p.1; MIAQ, No. 19, p. 3) AHRI and MIAQ recommended that DOE's additional requirement for water-cooled and water-source DX–DOASes with integral pumps should be written in language consistent with that in AHRI 920–2020. AHRI stated that AHRI 920–2020 includes the maximum permissible variations of the average of the test observations from the standard or desired test conditions in the ''Test Condition Tolerance'' column of Table 9, ''Test Operating and Test Condition Tolerances'', in AHRI 920–2020. This represents the greatest permissible difference between maximum and minimum instrument observations during the test. (AHRI, No. 22, p. 7; MIAQ, No. 19, p. 3) The Joint Advocates stated that DOE's proposal would ensure that equipment with integral pumps is tested in a consistent manner and would align with the calculation for DX–DOASes without integral pumps. (Joint Advocates, No. 21, p.1)

DOE notes that AHRI's comment implies that a test condition tolerance is the maximum permissible variations of the average of the test observations from the standard or desired test conditions, *and* the maximum permissible difference between maximum and minimum instrument observations during the test. DOE disagrees with this implication, and notes that while the condition tolerance is the maximum permissible variations of the average of the test observations from the standard or desired test conditions, the operating tolerance is the greatest permissible difference between maximum and minimum instrument observations during the test. This is consistent with industries use of the terms ''operating and condition tolerance'', noted in Sections 6.3.1 and 6.3.2 of AHRI 340/360–2019, for example. DOE also notes that Table 9 in AHRI 920–2020 simply indicates what the test and operating condition tolerances are, without specific language describing them.

Adopting the operating and condition tolerances on head pressure of DX–DOASes with integral pumps proposed in the July 2021 NOPR is consistent with the approached use for air side ESPs specified in AHRI 920–2020, which does not specify any such tolerances for external head pressure. DOE has determined that using the language in Appendix B, which adopts these operating and condition tolerances, aligns with the intent of the operating and condition tolerances specified in Table 9 of AHRI 920–2020. Similarly, adding a requirement that DX–DOASes with integral pumps be configured with a target external head pressure equal to 20 feet of water column is consistent with the treatment of DX–DOASes without integral pumps in AHRI 920–2020. To the extent the industry test procedure does not specify a target external head pressure, as well as a condition tolerance and operating tolerance for the water column, the industry test procedure would not ensure consistent and comparable results and would not ensure that the results reflect the equipment's representative average energy efficiency or energy use. DOE has determined that absent such a target and tolerances for the water column, the test procedure would not meet the representativeness requirement of 42 U.S.C. 6314(a)(2). As such, and consistent with stakeholder recommendations, DOE is adopting the supplemental specification for water-cooled and water-source DX–DOASes in section 2.2.1(c)(ii) of appendix B.

11. Calculation of the Degradation Coefficient

In the July 2021 NOPR, DOE noted that equation 20 in Section 6.9.2 of AHRI 920–2020 appears to incorrectly attribute the lower degradation coefficient to DX–DOASes operating *with* VERS and proposed to correct this by specifying in section 2.2.1(c)(iii) of appendix B that equation 20 is to be used for DX–DOASes ''*without* VERS, with deactivated VERS (*see* Section 5.4.3 of AHRI 920–2020), or with sensible-only VERS tested under Standard Rating Conditions other than D''. 86 FR 36018, 36042.

In response to the December 2021 SNOPR, the CA IOUs recommended

[31] ''External head pressure'' reflects the pump power output, in that it represents the height to which the pump can raise the water if the water were being moved opposite the force of gravity.

[32] A condition tolerance is the maximum permissible difference between the average value of the measured test parameter and the specified test condition.

[33] An operating tolerance is the maximum permissible range of a measurement that shall vary over the specified test interval. Specifically, the difference between the maximum and minimum sampled values shall be less than or equal to the specified test operating tolerance.

DOE consider incorporating by reference AHRI 920–2020 with Addendum, rather than AHRI 920–2020, because it makes a clarifying edit to Section 6.9.2. (CA IOUs, No. 31, p. 1) Upon review, DOE recognizes that this addendum makes the same correction to equation 20 that DOE identified, and that this is the only change made by the addendum. DOE received no further comment on this topic in response to the July 2021 NOPR. The version of AHRI 920–2020 (*i.e.,* with the addendum) that DOE is adopting in this final rule as the test procedure for DX–DOASes is consistent with the proposed correction in the July 2021 NOPR. As such, DOE is not separately specifying the correction in this final rule.

12. Calculation of Supplementary Heat Penalty

In the July 2021 NOPR, DOE noted that the term for supply airflow rate is missing from the supplementary heat penalty equations in Section 6.1.3.1 of ANSI/AHRI 920–2015. This issue is in fact resolved in Section C6.1 in AHRI 920–2020, as referenced by Section 6.3.2 of AHRI 920–2020, thereby resolving the problem noted by DOE. 86 FR 36018, 36043. DOE also noted that AHRI 920–2020 contains several minor clarifications that clarify when the supplemental heating penalty should apply. *Id.* DOE received no further comment on this topic. For the reasons discussed in the July 2021 NOPR, DOE is adopting the supplementary heat penalty provisions in AHRIAHRI 920–2020 through reference to Section 6 (Rating Requirements) of AHRI 920–2020, as enumerated in section 2.2.1(c) of appendix B.

13. Water-Cooled and Water-Source Heat Pump DX–DOAS

In the July 2021 NOPR, DOE discussed the following additional topics related to water-cooled and water-source heat pump DX–DOAS equipment: (1) test conditions for multiple-inlet water sources; (2) condenser liquid flow rate; and (3) energy consumption of heat rejection fans and chillers. 86 FR 36018, 36033–36035.

Regarding test conditions for multiple-inlet water sources, DOE noted that AHRI 920–2020 provides separate inlet fluid rating conditions for different water-cooled and water-source heat pump DX–DOAS applications, but some are identified as optional application rating conditions. 86 FR 36018, 36033. More specifically, Table 4 of AHRI 920–2020 includes separate inlet fluid rating conditions for water-cooled cooling tower and water-cooled chilled water operating conditions but Note 3 to Table 4 of AHRI 920–2020 indicates that the water-cooled chilled water condition is the optional application rating condition. Table 5 of AHRI 920–2020 includes separate inlet fluid rating conditions for water-source and ground-source closed-loop heat pump operating conditions but identifies the ground-source closed-loop conditions as the optional application rating condition. Tables 4 and 5 of AHRI 920–2020 also revise the inlet temperatures of the rating conditions for water-cooled cooling tower, water-source heat pump, and water-source ground-source closed-loop heat pump DX–DOASes, compared to the inlet temperatures of the rating conditions in AHRI 920–2015. *Id.* In the July 2021 NOPR, DOE proposed to adopt the water/fluid rating conditions provided in AHRI 920–2020 (Section 6 of AHRI 920–2020, which includes Table 4 and Table 5), including the chilled water and ground-source closed-loop conditions specified as optional in AHRI 920–2020 so as to allow for voluntary representations for those applications.[34] In the July 2021 NOPR, DOE noted that in any future energy conservation standards rulemaking for DX–DOASes, DOE would consider establishing standards and the corresponding certification requirements based on measurement using inlet fluid temperature conditions designated ''Condenser Water Entering Temperature, Cooling Tower Water'' and ''Water-Source Heat Pumps'' provided in Table 4 and Table 5 of AHRI 920–2020, respectively. *Id.* DOE notes that this is consistent with what was proposed in the February 2022 ECS NOPR. 87 FR 5560, 5567.

Regarding condenser liquid flow rate, DOE noted that more specifically, Section 6.1.6.1 of AHRI 920–2020 specifies that the water flow rate be specified by the manufacturer, and that the test method must deliver a liquid temperature rise no less than 8 °F when testing under Standard Rating Condition A. 86 FR 36018, 36033. Additionally, Section 6.1.6.2 of AHRI 920–2020 requires that the flow rate set under Standard Rating Condition A be used for testing at the remaining Standard Rating Conditions (B through F), unless automatic adjustment of the liquid flow rate is provided by the equipment, and it also requires that if condenser water flow rate is modulated under part-load conditions, the flow rate must not exceed the flow rate set for Condition A. DOE tentatively concluded that these provisions would be representative of flow rates used during an average use cycle and would not be unduly burdensome to conduct, and proposed to adopt the liquid flow requirements in AHRI 920–2020 for water-cooled and water-source heat pump DX–DOASes (Section 6 of AHRI 920–2020, which includes Section 6.1.6 Liquid Flow Rates for Water-Cooled, Water-Source Heat Pump, and Ground-Source Heat Pump). *Id.*

Regarding energy consumption of heat rejection fans and chillers, AHRI noted that AHRI 920–2020 does not address accounting for the energy consumption of heat rejection fans (*e.g.*, cooling tower fans) or chiller systems used to provide chilled water to DX–DOASes with chilled-water-cooled condensers. 86 FR 36018, 36035. DOE noted that accounting for this energy use is not a consistent industry practice, as evidenced by the differences between the AHRI 340/360–2007 (which provides a power consumption adjustment for both the cooling tower fan and the circulating water pump) for more typical commercial package air conditioning equipment, and the ISO approach (which does not account for cooling tower fan energy use at this time) for water-source heat pumps. DOE also noted that including the energy of the heat rejection fan and chiller systems would not help to distinguish between models of different efficiency, since the adder would be identical for two same-capacity models with different efficiencies. For these reasons, and consistent with AHRI 920–2020, DOE proposed not to include any energy consumption associated with heat rejection fans, cooling towers, or chiller systems used to cool the water loops of water-cooled or water-source DX–DOASes. *Id.*

DOE did not receive additional comments regarding these topics or DOE's related proposals. For the reasons discussed in the prior paragraphs and in the July 2021 NOPR, DOE is adopting the water-cooled and water-source heat pump DX–DOAS provisions in AHRI 920–2020 that were presented in the July 2021 NOPR (*i.e.,* Section 6 of AHRI 920–2020, which includes Table 4 and Table 5, as enumerated in section 2.2.1(c) of the proposed appendix B).

[34] In the July 2021 NOPR and December 2021 SNOPR, DOE inadvertently indicated in the proposed section 2.2.3 of appendix B that for water-cooled DX–DOASes, the ''condenser water entering temperature, cooling tower'' conditions specified in Table 4 of AHRI 920–2020 are optional, and that for water-source heat pump DX–DOASes, the ''water-source heat pump'' conditions specified in Table 5 of AHRI 920–2020 are optional. DOE did not mean to indicate this because these are the required test conditions, not the conditions for making optional representations. DOE has corrected this error in this final rule.

14. Airflow Measurement Apparatus

In the July 2021 NOPR, DOE noted that Figures 1 and 2 of ANSI/ASHRAE 198–2013 present the typical test set-up for DX–DOASes with and without energy recovery, and that the figures show airflow and condition measuring apparatus at both the inlet and the outlet ends of each airflow path (*i.e.,* the outdoor/supply and return/exhaust paths). 86 FR 36018, 36030. DOE tentatively concluded that requiring two airflow-measuring apparatus per airflow path may be unduly burdensome in certain instances; Section C2.2 of AHRI 920–2020, among other things, requires one airflow-measuring apparatus per airflow path; and that use of one airflow-measuring apparatus offers a more suitable approach to airflow measurement. *Id.* Additionally, DOE noted that the requirement for just one airflow-measuring apparatus per airflow path is consistent with the DOE test procedures for all other commercial and residential air-conditioning and heating systems and limits the testing costs and burden on manufacturers. *Id.* Therefore, DOE proposed to adopt the provisions for the airflow-measuring apparatus specified in Section C2.2 of AHRI 920–2020 (rather than the dual measurement apparatus specifications in Figures 1 and 2 of ANSI/ASHRAE 198–2013).

DOE received no comment on this proposal. For the reasons discussed in the prior paragraph and in the July 2021 NOPR, DOE is adopting the provisions for a single airflow-monitoring apparatus in Appendix C of AHRI 920–2020, as enumerated in section 2.2.1(f) of appendix B.

15. Demand-Controlled Ventilation

DX–DOAS units are often used in demand-controlled ventilation (''DCV'') operation, which regulates the building ventilation requirement based on parameters such as building occupancy. During periods of non-occupancy, which could represent a significant portion of field-use, the DCV system controls the unit to operate at a low airflow rate, thereby reducing the unit's overall energy use. DX–DOASes using DCV systems are typically equipped with variable-speed supply fans that can be adjusted to meet changing ventilation needs.

In the July 2021 NOPR, DOE stated that DOE is not aware of representative field data regarding the typical DX–DOAS duty cycle when operating with DCV and, thus, the characterization of DCV performance would be an important first step in considering this control feature under the test procedure. 86 FR 36018, 36040. DOE stated that adopting additional testing requirements to capture the effect of DCV could significantly increase testing cost and complexity. Given the lack of data on in-field performance and the anticipated additional testing burden of such a test, DOE tentatively decided not to include performance under DCV operation in its proposed test procedure for DX–DOASes at this time. *Id.*

DOE received no comments on this proposal. For the reasons discussed in the prior paragraph and in the July 2021 NOPR, DOE is not adopting provisions specific to DCV operation.

F. Configuration of Unit Under Test

1. Background and Summary

DX–DOASes are sold with a wide variety of components, including many that can optionally be installed on or within the unit both in the factory and in the field. In all cases, these components are distributed in commerce with the DX–DOAS, but can be packaged or shipped in different ways from the point of manufacturer for ease of transportation. Each optional component may or may not affect a model's measured efficiency when tested to the DOE test procedure adopted in this final rule. For certain components not directly addressed in the DOE test procedure, this final rule provides more specific instructions on how each component should be handled for the purposes of making representations in part 429. Specifically, these instructions provide manufacturers clarity on how components should be treated and how to group individual models with and without optional components for the purposes of representations to reduce burden. DOE is adopting these provisions in part 429 to allow for testing of certain individual models that can be used as a proxy to represent the performance of equipment with multiple combinations of components.

DOE is handling DX–DOAS components in two distinct ways in this final rule to help manufacturers better understand their options for developing representations for their differing product offerings. First, the treatment of certain components is specified by the test procedure, such that their impact on measured efficiency is limited. For example, a return air damper must be set in the closed position and sealed during testing, resulting in a measured efficiency that would be similar or identical to the measured efficiency for a unit without a return damper. Second, DOE is adopting provisions expressly allowing certain models to be grouped together for the purposes of making representations and allowing the performance of a model without certain optional components to be used as a proxy for models with any combinations of the specified components, even if such components would impact the measured efficiency of a model. A furnace is an example of such a component. The efficiency representation for a model with a furnace is based on the measured performance of the DX–DOAS as tested without the component installed because the furnace is not easily removed from the DX–DOAS for testing.[35]

The following sections describe DOE's proposals for addressing such components in the July 2021 NOPR and December 2021 SNOPR, comments received in response to the proposals, and the approach established in this final rule.

2. Approach for Addressing Certain Components

a. Proposals

Appendix F of AHRI 920–2020 provides discussion of certain components, which the committee developing the standard does not believe should be considered for individual model representations, and the standard provides instructions either to limit their impact during testing or to determine representations for individual models with such components based on individual models that do not include them. DOE proposed in the July 2021 NOPR to implement representation provisions for certain components by incorporating by reference appendix F of AHRI 920–2020. 86 FR 36018, 36045.

In the December 2021 SNOPR, DOE revised its proposals from the July 2021 NOPR to be more consistent with DOE's regulatory provisions and to provide clarity on how these DOE provisions would be implemented for both certification and enforcement testing. 86 FR 72874, 72879 (December 23, 2021). DOE noted that the revised approach would clarify how to test a specific unit and which model to test as the basis for efficiency representations of a group of individual models. Specifically, DOE proposed to include in the new appendix B to 10 CFR part 431 provisions for certain components to limit their impact on efficiency during testing. *Id.* Additionally, DOE proposed representation requirements in 10 CFR 429.43(a)(4) that explicitly allow

[35] Note that in certain cases, as explained further in section III.F.2.d of this document, the representation may have to be based on an individual model with a furnace.

representations for individual models equipped with certain components to be based on testing of individual models without those components installed—the proposal includes a table listing the components for which these provisions would apply (furnaces and steam/hydronic heat coils, ducted condenser fans, sound traps/sound attenuators, and VERS preheat). *Id.* Finally, DOE proposed specific product enforcement provisions in 10 CFR 429.134 indicating that DOE would conduct enforcement testing on individual models that do not include the components listed in the aforementioned table, except in certain circumstances. *Id.* at 86 FR 72880.

b. General Comments

DOE received multiple comments related to these proposals in response to the December 2021 SNOPR. While comments were received on details of the proposed provisions, *e.g.,* regarding the specific components that should or should not be included in Table 1 to paragraph (a)(4)(i),[36] no comments received specifically addressed the general restructuring of the provisions in the regulations.

ASAP and NYSERDA generally supported DOE's proposals related to specific components. (ASAP and NYSERDA, No. 32, p. 1) AHRI and MIAQ generally supported the proposals in the December 2021 SNOPR regarding specific components; however, they expressed concerns that DOE would potentially consider adding certification reporting requirements such that manufacturers would be required to certify which otherwise identical models are used for making representations of basic models that include individual models with specific components, similar to how test combinations are certified for consumer central air conditioners and heat pumps, and that such a structure would result in thousands of basic models and would be overly burdensome. (AHRI, No. 34, p. 4–5; MIAQ, No. 29, p. 4)

DOE has considered these general comments, as well as those discussed in the following sections, and has determined that clarifications are warranted to the approach proposed in the December 2021 SNOPR regarding the treatment of certain components for determining represented values. Therefore, DOE is adopting the proposals made in the December 2021 SNOPR, with clarifications that are discussed in detail in section III.F.2.c through III.F.2.f of this final rule. Additionally, regarding the comment from AHRI and MIAQ pertaining to DOE potentially requiring future certification of otherwise identical models, DOE has concluded that the approach in this final rule may preclude the need for such certification requirements, but certification requirements for DX–DOASes in general will be considered, if needed, in a separate rulemaking.

c. Components Addressed Through Test Provisions of 10 CFR Part 431 Appendix B

DOE is adopting test provisions at 10 CFR part 431 appendix B section 2.2.2 to prescribe how certain components must be configured for testing as proposed in the December 2021 SNOPR. Specifically, DOE is requiring in appendix B that steps be taken during unit setup and testing to limit the impacts on the measurement of these components:

- Return and Exhaust Dampers
- Ventilation Energy Recovery System (VERS) Bypass Dampers
- Fire/Smoke/Isolation Dampers
- Furnaces and Steam/Hydronic Heat Coils
- Power Correction Capacitors
- Hail Guards
- Ducted Condenser Fans
- Sound Traps/Sound Attenuators
- Humidifiers
- UV Lights
- High-Effectiveness Indoor Air Filtration

The components are listed and described in Table 2.1 in section 2.2.2 of the new appendix B, and test provisions for them are provided in the table.

d. Components Addressed Through Representation Provisions of 10 CFR 429.43

As discussed, in the December 2021 SNOPR, DOE proposed representation requirements in 10 CFR 429.43(a)(4) that explicitly allowed representations for individual models with certain components to be based on testing for individual models without those components—the proposal included a table (''Table 1 of 10 CFR 429.43'') listing the components for which these provisions would apply (furnaces and steam/hydronic heat coils, ducted condenser fans, sound traps/sound attenuators, and VERS preheat). 86 FR 72874, 72879 (December 23, 2021).

In response to the December 2021 SNOPR, Carrier supported DOE's approach of assessing compliance of equipment with exempted specific components present when only individual models with that component are distributed in commerce. (Carrier, No. 30, p. 2) Carrier also supported DOE's proposal that if a basic model includes both individual models with and without the exempted component, then compliance may be assessed on the model without the exempted component. *Id.* Additionally, ASAP and NYSERDA commented that in cases where individual models include more than one of the listed specific components, the ratings must be representative of the lowest efficiency. (ASAP and NYSERDA, No. 32, p. 1)

In this final rule, DOE is making two clarifications to the representation requirements as proposed in the December 2021 SNOPR. First, DOE is specifying that the basic model representation must be based on the least-efficient individual model that is a part of the basic model and clarifying how this long-standing basic model provision interacts with the component treatment in § 429.43 that is being adopted. Adoption of this clarification in the regulatory text is consistent with the December 2021 SNOPR, in which DOE noted that in some cases, individual models may include more than one of the specified components or there may be individual models within a basic model that includes various dehumidification components that result in more or less energy use. 86 FR 72874, 72880. In such cases, DOE stated that the represented values of performance must be representative of the individual model with the lowest efficiency found within the basic model. *Id.* DOE believes regulated entities may benefit from clarity in the regulatory text as to how the least efficient individual model within a basic model provision works with the component treatment for DX–DOASes. The amendments in this final rule explicitly state that the exclusion of the specified components from consideration in determining basic model efficiency in certain scenarios is an exception to basing representations on the least efficient individual model within a basic model. In other words, the components listed in § 429.43 are not being considered as part of the representation under DOE's regulatory framework if certain conditions are met as discussed in the following paragraphs and thus, their impact on efficiency is not reflected in the representation. In this case, the basic model's representation is generally determined by applying the testing and sampling provisions to the least efficient individual model in the basic model that does not have a component listed in § 429.43.

Second, DOE is also clarifying instructions for instances when

[36] These comments are discussed in sections III.F.2.d, III.F.2.d.1, and III.F.2.d.2 of this document.

individual models within a basic model may have more than one of the specified components and there may be no individual model without any of the specified components. DOE is adopting the concept of an ''otherwise comparable model group'' (''OCMG'') instead of using the proposed ''otherwise identical'' provisions. An OCMG is a group of individual models within the basic model that do not differ in components that affect energy consumption as measured according to the applicable test procedure other than the specific components listed in Table 1 of 10 CFR 429.43, but may include individual models with any combination of such specified components. Therefore, a basic model can be composed of multiple OCMGs, each representing a unique combination of components that affect energy consumption as measured according to the applicable test procedure, other than the specified excluded components listed in Table 1 of 10 CFR 429.43. For example, a manufacturer might include two tiers of control system within the same basic model, in which one of the control systems has sophisticated diagnostics capabilities that require a more powerful control board with a higher wattage input. DX–DOAS individual models with the ''standard'' control system would be part of OCMG A, while individual models with the ''premium'' control system would be part of a different OCMG B, since the control system is not one of the specified exempt components listed in Table 1 of 10 CFR 429.43. However, both OCMGs may include different combinations of furnaces, sound traps, and VERS preheat. Also, both OCMGs may include any combination of characteristics that do not affect the efficiency measurement, such as paint color.

The OCMG is used to determine which individual models are used to determine a represented value. Specifically, when identifying the individual model within an OCMG for the purpose of determining a representation for the basic model, only the individual model(s) with the least number (which could be zero) of the specific components listed in Table 1 of 10 CFR 429.43 is considered. This clarifies which individual models are exempted from consideration for determination of represented values in the case of an OCMG with multiple specified components and no individual models with zero specific components listed in Table 1 of 10 CFR 429.43—*i.e.,* models with a number of specific components listed in Table 1 of 10 CFR 429.43 greater than the least number in the OCMG are exempted. In the case that the OCMG includes an individual model with no specific components listed in Table 1 of 10 CFR 429.43, then all individual models in the OCMG with specified components would be exempted from consideration. The least efficient individual model across the OCMGs within a basic model would be used to determine the representation of the basic model. In the case where there are multiple individual models within a single OCMG with the same non-zero least number of specified components, the least efficient of these would be considered. DOE has illustrated the OCMG concept in an attempt to clarify this approach in the ''Illustration of Specified Components Requirements'' document.[37]

DOE relies on the term ''comparable'' as opposed to ''identical'' to indicate that for the purpose of representations, the components that impact energy consumption as measured by the applicable test procedure are the relevant components to consider—differences such as unit color and presence of utility outlets would not warrant separate OCMGs.

The use of the OCMG concept results in representations being based on the same individual models as the approach proposed in the December 2021 SNOPR, *i.e.,* the represented values of performance are representative of the individual model(s) with the lowest efficiency found within the basic model, excluding certain individual models with the specific components listed in Table 1 of 10 CFR 429.43. Further, the approach as adopted in this final rule is structured to more explicitly address individual models with more than one of the specific components listed in Table 1 of 10 CFR 429.43, as well as instances in which there is no comparable model without any of the specified components.

In response to the December 2021 SNOPR, DOE also received comments regarding the inclusion or exclusion of specific components in Table 1 of 10 CFR 429.43, as discussed in the following sections.

(1) Furnaces

In the December 2021 SNOPR, DOE proposed that furnaces would be a specific component specified in 10 CFR 429.43 for exclusion, consistent with the treatment of this feature in AHRI 920–2020. Therefore, if a manufacturer includes individual models distributed in commerce without furnaces within the same basic model as individual models distributed in commerce with a furnace, manufacturers would be able to determine represented values for the basic model based on the performance of an individual model without a furnace installed if it complies with the requirements discussed in section III.F.2.d of this document. 86 FR 72874, 72870–72880.

The CA IOUs commented that DOE's proposal for allowing furnaces to be specific components that are optional for testing is not consistent with the approach in AHRI 340/360–2019. They urged DOE to consider the measurable energy consumption impact of mandating the inclusion of furnaces during testing and stated the importance of such a mandate is evidenced via the efficiency level differences between equipment with electric resistance heating or no heating, and with all other types of heating, as set forth in Table 3 to 10 CFR 431.97 titled ''Updates to the Minimum Cooling Efficiency Standards for Air Conditioning and Heating Equipment.'' (CA IOUs, No. 31, p. 2)

ASAP and NYSERDA urged DOE to remove furnaces from the list of specified excluded components and expressed concerns with DOE's proposal. (ASAP and NYSERDA, No. 32, p. 1) Specifically, ASAP and NYSERDA asserted that classifying a furnace a specified excluded component will permit testing that generates ratings that are not representative of the typical energy use of many DX–DOASes, and that the pressure drop of the furnace will not be accounted for. They also noted that for CUAC/HPs, DOE's energy conservation standards account for the impact of the presence of a gas furnace by including different equipment classes for units with and without furnaces. *Id.*

Similarly, NEEA recommended DOE remove furnaces as an excluded component and align with the CUAC/HP requirements for testing with furnaces installed. (NEEA, No. 35, p. 5) NEEA also suggested that DOE consider test procedures that reflect whole energy use, instead of having separate test procedures and metrics for furnaces and DX–DOASes, so that all features that impact energy use are accounted for. Specifically, NEEA stated that although the presence of the furnace may not have a large impact on the moisture removal (ISMRE) rating, DOE's approach to continue testing heating and cooling systems in HVAC systems completely separately may mean that the rating is not accounting for all features that impact energy use (both

[37] The ''Illustration of Specified Components Requirements'' document can be found at *www.regulations.gov/docket/EERE-2017-BT-TP-0018.*

that could save energy, or that increase energy use). *Id.*

DOE agrees that furnaces impose a pressure drop that may be greater than that of electric resistance heaters that may be used in DX–DOASes to provide reheat or heat in applications where furnaces are not utilized. DOE also recognizes that there may be an energy use impact associated with the greater airside pressure drop of a furnace as compared to an electric resistance heating element.

Neither the ISMRE levels specified in ASHRAE 90.1–2016 for DX–DOASes, nor the ISMRE2 levels proposed in the February 2022 ECS NOPR, take into consideration the additional energy use associated with furnace pressure drop. 87 FR 5560, 5564. DOE notes, however, that ASHRAE 90.1–2019 does not include separate equipment classes for DX–DOASes with and without furnaces. Therefore, the approach adopted in this final rule is consistent with the equipment class structure of ASHRAE 90.1–2019. DOE encourages stakeholders to consider whether to require DX–DOASes with furnaces to be tested with the furnace installed and whether to establish separate classes with different ISMRE2 levels for such equipment during the next revision of AHRI 920 and the next update of ASHRAE 90.1.

The amendments adopted in this final rule provide that representations, including those for certification of compliance, be based on individual models within the basic model that do not have a furnace installed, assuming such representation is consistent with the requirements established in this final rule, as discussed in III.F.2.d of this document.

(2) Coated Coils

As previously mentioned, in the December 2021 SNOPR DOE proposed to not include coated coils in the specific components list specified in 10 CFR 429.43 because DOE tentatively concluded that the presence of coated coils does not result in a significant impact to performance of DX–DOASes, and therefore, that models with coated coils should be rated based on performance of models with coated coils present. 86 FR 72874, 72880.

AHRI and MIAQ commented that coil coatings should remain an optional system feature. (AHRI, No. 34, p. 4; MIAQ, No. 29, p. 4) They stated that if coil coatings remain an optional feature, this would be consistent with the basic model structure of CUAC/HPs rated using AHRI 340/360–2019. They also stated that they support the flexibility to optionally include coated coils in a basic model or to create a unique basic model, depending on the impact on performance, and that each coating is different, and some do impact performance. *Id.* Similarly, Carrier did not support removing coated coils from the list of components that are exempted from testing. (Carrier, No. 30, p. 3) Carrier stated that alignment with AHRI 920–2020 by including the coated coil testing exemption can help streamline manufacturer certification and DOE enforcement of DX–DOAS energy conversation standards. *Id*

DOE notes that AHRI and MIAQ's comment asserting that some coated coils do impact energy use suggests that there are other implementations of coated coils that do not impact energy consumption as measured by the adopted test procedure; *i.e.,* the implementation of coated coils does not necessarily or inherently impact energy use. AHRI has not provided data indicating the range of impact for those coatings that do impact energy use, nor how other characteristics of the coatings such as durability and cost correlate with energy use impact. Absent such data, DOE is unable to determine the specific range of impact on energy use made by coated coils. Nevertheless, given that comments suggest that certain implementations of coated coils do not impact energy use, DOE has determined that for those DX–DOASes for which coated coils do impact energy use, representations should include that impact to provide full disclosure for commercial customers. As such, DOE is not incorporating coated coils into DOE's provisions specified in 10 CFR 429.43(a)(3) allowing for the exclusion of specified components when determining represented values, as discussed in section III.F.2 of this document.

e. Enforcement Provisions of 10 CFR 429.134

As proposed, DOE sought to address DX–DOASes that include the specified excluded components both in the requirements for representation (*i.e.,* 10 CFR 429.43) and as part of the equipment specific enforcement provisions for assessing compliance (*i.e.,* 10 CFR 429.143). 86 FR 72874, 72884–72887.

Instruction on which units to test for the purpose of representations are addressed in 10 CFR 429.43. DOE has determined that including parallel enforcement provisions in 10 CFR 429.143 would be redundant and potentially cause confusion because DOE would select for enforcement only those individual models that are the basis for making basic model representations as specified in 10 CFR 429.43. Therefore, in this final rule DOE is providing the requirements for making representations of DX–DOAS that include the specified components in 10 CFR 429.43, and is not including parallel direction in the enforcement provisions of 10 CFR 429.134 established in this final rule. However, DOE is finalizing the provision that allows enforcement testing of alternative individual models with specific components, if DOE cannot obtain for test the individual models without the components that are the basis of representation.

f. Testing Specially-Built Units That Are Not Distributed in Commerce

In the December 2021 SNOPR, DOE noted that Section F2.4 of AHRI 920–2020 includes a list of features that are optional for testing, and that this section further specifies the following general provisions regarding testing of units with specified components:

- If an otherwise identical model (within the same basic model) without the feature is distributed in commerce, test the otherwise identical model
- If an otherwise identical model (within the same basic model) without the feature is not distributed in commerce, conduct tests with the feature present but configured and de-activated so as to minimize (partially or totally) the impact on the results of the test (as determined per the provisions in section D2). Alternatively, the manufacturer may indicate in the supplemental testing instructions that the test shall be conducted using a specially built otherwise identical unit that is not distributed in commerce and does not have the feature.

86 FR 72874, 72879.

As mentioned in the December 2021 SNOPR, DOE tentatively determined that testing an otherwise identical unit that is not distributed in commerce and does not have the component (*i.e.,* a ''specially built'' unit) would not provide ratings representative of equipment distributed in commerce and proposed not to include this option for testing specially built units in its certification and enforcement provisions. *Id.*

Multiple stakeholders supported DOE's proposal to exclude the option to test specially built units that are not distributed in commerce. (CA IOUs, No. 31, p. 2; Carrier, No. 30, p. 2; ASAP and NYSERDA, No. 32, p. 1; NEEA, No. 35, p. 5) Specifically, the CA IOUs, NEEA, as well as ASAP and NYSERDA noted that testing specially built units would provide ratings not representative of equipment distributed in commerce.

(NEEA, No. 35, p. 5; CA IOUs, No. 31, p. 2; ASAP and NYSERDA, No. 32, p. 1) The CA IOUs additionally noted that it could yield test results that are not representative of an average use cycle. (CA IOUs, No. 31, p. 2)

Based on DOE's tentative determination in the December 2021 SNOPR that testing specially built units would not provide ratings representative of equipment distributed in commerce and based on stakeholder comments, in this final rule, DOE is not adopting the option to test specially built units in its certification and enforcement provisions.

G. Determination of Represented Values

In addition to the issues related to representations discussed in the prior section, DOE's proposals addressed a number of additional issues specific to determination of represented values. These issues are discussed in the following paragraphs.

1. Basic Model

In the July 2021 NOPR, DOE proposed a definition for a DX–DOAS basic model derived from the basic model definition for other commercial packaged air conditioning and heating equipment set forth at 10 CFR 431.92, and requested comment on the proposed definition. 86 FR 36018, 36044. Specifically, DOE proposed that in 10 CFR 431.92, a basic model for a DX–DOAS would mean all units manufactured by one manufacturer within a single equipment class; with the same or comparably performing compressor(s), heat exchangers, ventilation energy recovery system(s) (if present), and air moving system(s), and with a common ''nominal'' moisture removal capacity. *Id.*

AHRI recommended that the definition be amended consistent with the definition in AHRI 920–2020 appendix F, which specifies that rated ''nominal'' moisture removal capacity is determined at condition A of AHRI 920–2020. AHRI also recommended that the term ''nominal'' be defined consistent with AHRI 920–2020, as ''products with the same advertised MRC'' so that products are grouped correctly for regulatory purposes. (AHRI, No. 22, p. 8)

MIAQ supported defining these terms as defined in AHRI 920–2020. (MIAQ, No. 19, p. 4) Carrier supported DOE's proposed definition of basic model for DX–DOAS units. (Carrier, No. 20, p. 3)

The basic model definition for small, large, and very large air-cooled or water-cooled commercial package air conditioning and heating equipment means all units manufactured by one manufacturer within a single equipment class, having the same or comparably performing compressor(s), heat exchangers, and air moving system(s) that have a common ''nominal'' cooling capacity. 10 CFR 431.92. DOE also uses similar terminology for the basic model definition of computer room air conditioners, variable refrigerant flow systems, and small, large, and very large water source heat pumps. *Id.* DOE is unaware of any issues in defining this equipment using the term ''nominal'' without reference to conditions. As such, DOE determines that changes to the definition of basic model as it relates DX–DOAS and as proposed in the July 2021 NOPR are not warranted. Therefore, DOE is adopting the DX–DOAS basic model definition presented in the July 2021 NOPR (*i.e.,* that for DX–DOASes, basic model means all units manufactured by one manufacturer within a single equipment class; with the same or comparably performing compressor(s), heat exchangers, ventilation energy recovery system(s) (if present), and air moving system(s), and with a common ''nominal'' moisture removal capacity).

2. Sampling Plan Requirements

As previously mentioned, DOE is defining DX–DOAS as a category of unitary DOAS and is defining unitary DOAS as a category of small, large, or very large commercial package air conditioning and heating equipment. In the July 2021 NOPR, DOE proposed to apply the same sampling requirements to DX–DOASes as the sampling requirements applicable to other commercial package air conditioning and heating equipment under 10 CFR 429.43. 86 FR 36018, 36044.

Carrier and the CA IOUs supported DOE's proposal in the July 2021 NOPR. (Carrier, No. 20, p. 3; CA IOUs, No. 25, p. 3) The CA IOUs stated that manufacturers of other types of small, large, or very large commercial package air conditioning and heating equipment are able to comply with the sampling requirements set forth by DOE.

AHRI stated that while DOE's proposal for DX–DOAS sampling requirements appears appropriate, there is a lack of test data using AHRI 920–2020 to support the proposal and stated that current testing technology may not support this level of precision. AHRI recommended that DOE issue an SNOPR after ASHARE Standard 90.1–2022 publishes to allow manufacturers to test and rate equipment for an informed determination of the sampling plan requirements. (AHRI, No. 22, pp. 8–9) MIAQ recommended requiring two systems with 90percent confidence level for the sampling plan of DX–DOASes. (MIAQ, No. 19, p. 4)

DOE notes that the confidence level currently used for small, large, or very large commercial package air conditioning and heating equipment is 95 percent, which is higher than the 90 percent suggested by MIAQ. 10 CFR 429.43(A)(2). MIAQ did not provide data supporting a 90 percent confidence level, and DOE does currently have any data to support lowering the confidence level from 95 percent to 90 percent.

Although, DOE agrees with AHRI that there is not a significant amount of DX–DOAS performance data available that is based on testing to AHRI 920–2020, DOE has determined that the test procedure DOE is adopting does not assess performance in an inherently different manner than the test procedures for other small, large, or very large commercial package air conditioning and heating equipment. That is, performance for both DOAS and other categories of such equipment are measured using the measurement techniques generally described in ANSI/ASHRAE 37–2009. Specifically, capacity is determined by measurement of airflow using air flow nozzles, and measurement of air entering and leaving conditions using temperature sensors and devices to measure moisture content of the air, typically psychrometers. The accuracy requirements for these measurements are consistent for the two equipment categories. Further, the equipment components and manufacturing techniques used to produce the equipment are generally the same. Thus, the two key factors affecting uncertainty of measurement are consistent with each other for the two equipment categories, which suggests that using the same sample plan statistics, such as a 95 percent confidence interval, is appropriate. For the reasons discussed and presented in the July 2021 NOPR, DOE is adopting in 10 CFR 429.43, the sampling plan requirements proposed in the July 2021 NOPR, which are consistent with the sampling requirements for small, large, or very large commercial package air conditioning and heating equipment.

3. Multiple Refrigerants

In the July 2021 NOPR, DOE noted that some commercial package air conditioning and heating equipment may be sold with more than one refrigerant option, and that DOE has identified at least one commercial package air conditioning and heating equipment manufacturer that provides two refrigerant options under the same model number. 86 FR 36018, 36044.

DOE noted that the use of a refrigerant that requires different hardware (such as R–407C as compared to R–410A) would represent a different basic model, and according to the current CFR, separate representations of energy efficiency are required for each basic model. DOE also noted that some refrigerants (such as R–422D and R–427A) would not require different hardware, and a manufacturer may consider them to be the same basic model.

In the July 2021 NOPR, DOE requested comment on a proposal to add a new paragraph at 10 CFR 429.43(a)(3) specifying that a manufacturer must determine the represented values for that basic model based on the refrigerant(s)—among all refrigerants listed on the unit's nameplate—that result in the lowest ISMRE2 and ISCOP2 efficiencies, respectively. For example, the dehumidification performance metric ISMRE2 must be based on the refrigerant yielding the lowest ISMRE2, and the heating performance metric ISCOP2 (if the unit is a heat pump DX–DOAS) must be based on the refrigerant yielding the lowest ISCOP2. *Id.*

AHRI, the Joint Advocates, the CA IOUs, Carrier, and MIAQ stated that they support DOE's proposal in the July 2021 NOPR. (AHRI, No. 22, p. 9; Joint Advocates, No. 21, p. 2; CA IOUs, No. 25, p. 5; Carrier, No. 20, p. 4; MIAQ, No. 19, p. 4; MIAQ, No. 19, p. 6)

As discussed in section III.F.2 of this final rule, DOE is clarifying in 10 CFR 429.43(a)(3)(i)(A) that representations for a DX–DOAS basic model must be based on the least efficient individual model(s) distributed in commerce within the basic model (with the exception specified in 10 CFR 429.43(a)(3)(i)(A) for certain individual models with the components listed in Table 1 of 10 CFR 429.43; this list does not include different refrigerants). Upon further consideration, DOE has determined that the proposal in the July 2021 NOPR regarding multiple refrigerants is already included substantively in the provision adopted at 10 CFR 429.43(a)(3)(i)(A), and that the refrigerant-specific provisions proposed in the July 2021 NOPR at 10 CFR 429.43(a)(3) would be redundant. As such, in this final rule, DOE is not adopting the refrigerant specific language proposed in the July 2021 SNOPR.

MIAQ noted that the industry has petitioned the EPA to implement a January 1, 2025 compliance date for the transition to refrigerants with a global warming potential less than 750 associated with the AIM Act. MIAQ requested that DOE's compliance date for energy conservation standards be no sooner than this date due to the complexity and expense of the refrigerant transition. (MIAQ, No. 19, p. 6) MIAQ stated that a compliance date sooner than January 1, 2025 would result in the industry not having sufficient time to test and certify product portfolios with current refrigerants prior to beginning this effort a second time with a next-generation refrigerant. *Id.* MIAQ also reiterated this in their response to the December 2021 SNOPR, adding that DOAS equipment is complex, expensive, and requires substantial time to test and certify per required test procedures, and that setup time alone can take as much one week per basic model. (MIAQ, No. 29, p. 4)

As previously mentioned, DOE has separately initiated a rulemaking to analyze DX–DOAS energy conservation standards and has most recently published the February 2022 ECS NOPR. DOE will determine the appropriate compliance date should DOE adopt DX–DOAS standards, in that ongoing rulemaking.

4. Alternative Energy-Efficiency Determination Methods

By establishing DX–DOASes as a subset of unitary-DOASes, and by establishing unitary-DOASes as a category of small, large, or very large commercial package air conditioning and heating equipment, the provisions of 10 CFR 429.43 authorizing use of an alternative energy-efficiency determination method (''AEDM'') for commercial HVAC equipment would apply to DX–DOASes. In the July 2021 NOPR, DOE proposed to allow DX–DOAS manufacturers to use AEDMs for determining the ISMRE2 and ISCOP2 (if applicable) in accordance with 10 CFR 429.70. 86 FR 36018, 36044. DOE proposed to create four validation classes of DX–DOASes within the *Validation classes* table at 10 CFR 429.70(c)(2)(iv): air-cooled/air-source and water-cooled/water-source, each with and without VERS (*i.e.,* 8 validation classes in total). DOE also proposed to require testing of two basic models to validate the AEDMs for each validation class. Finally, DOE proposed to specify in the table at 10 CFR 429.70(c)(5)(vi) a tolerance of 10-percent for DX–DOAS verification tests for ISMRE2 and ISCOP2 when comparing test results with certified ratings. *Id.* These proposals are consistent with the treatment of other categories of commercial package air-conditioning and heating equipment.

Carrier supported the proposed AEDM requirements and a 10-percent tolerance for comparison of test results and rated values. (Carrier, No. 20, p. 4) AHRI noted that heat pump units may be considered as separate basic model groups from the cooling-only units, and therefore the number of tests required for AEDM validation would be 16 (*i.e.,* double the count from the July 2021 NOPR). (AHRI, No. 22, p. 9) AHRI also recommended that when manufacturers use Option 2 on units with the same cooling section design, separate AEDMs should not be required for products with and without VERS, stating that this would be technically consistent with the test procedure and would reduce the testing burden on manufacturers. Additionally, AHRI stated that the appropriateness of the 10-percent tolerance for AEDM verification could not be confirmed without sufficient test data collection, which has not yet occurred, and that this would amount to further reason for DOE to delay its test procedure rulemaking until AHRI 920–2020 is adopted by ASHRAE 90.1. *Id.* MIAQ similarly expressed concern if a 10-percent tolerance is appropriate. (MIAQ, No. 19, p. 5)

DOE notes that the validation classes for other small, large, and very large commercial package air conditioning and heating equipment do not separate heat pumps and air conditioners into separate validation classes. DOE has no reason to suggest that separating these into separate validation classes for DX–DOASes would be more appropriate, or result in a more representative AEDM. Absent any evidence to support establishing another set of validation classes for DX–DOAS heat pumps, DOE is not establishing a separate set of validation classes for this equipment.

Furthermore, DOE has determined that establishing a single validation class for units with and without VERS is not appropriate. The range of air conditions entering a DX–DOAS without VERS is much broader than the range of air conditions entering a unit with VERS, hence it is expected that validation of an AEDM by testing two models with VERS would be a less rigorous validation than testing two models without VERS. Hence, although DOE has determined that a separate validation class for units with VERS is necessary for this reason, the AEDM requirements as finalized in this final rule allow manufacturers to use an AEDM developed for models without VERS to develop representations for models with VERS.

5. Rounding

In the July 2021 NOPR, DOE requested comment on its proposal to adopt in section 2.2.1(c)(iv) of appendix B the rounding requirements for DX–DOAS performance metrics specified in

Sections 6.1.2.1 through 6.1.2.8 of AHRI 920–2020. 86 FR 36018, 36045. This included rounding requirements for the following: COP, electrical power input, ISCOP2, ISMRE2, MRC, MRE, total heating capacity, supply air temperature, and due point temperature.

In response to the July 2021 NOPR, DOE received comment from AHRI, Carrier, and MIAQ supporting DOE's proposal to adopt the rounding requirements in AHRI 920–2020. (AHRI, No. 22, p. 10; Carrier, No. 20, p. 4; MIAQ, No. 19, p. 5) For the reasons discussed in the July 2021 NOPR, DOE is adopting the rounding requirements specified in Sections 6.1.2.1 through 6.1.2.8 of AHRI 920–2020 in section 2.2.1(c)(iv) of the proposed appendix B.

H. Effective and Compliance Dates

The effective date for the adopted test procedure will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 360 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1))

I. Test Procedure Costs

In the July 2021 NOPR, DOE tentatively determined that DOE's proposed test procedure is consistent with current industry practice, and, therefore, manufacturers would not be expected to incur any additional costs. 86 FR 36018, 36046–36047. Importantly, DOE noted that the adoption of the test procedure proposed in the July 2021 NOPR would not require manufacturers to certify ratings to DOE, and that DOE would address certification as part of a separate rulemaking. *Id.*

DOE also tentatively determined in the July 2021 NOPR that the extent to which DOE is making modifications to the industry consensus test procedure (AHRI 920–2020), DOE is consistent with the industry consensus standard; and that absent such modifications, the industry test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B) and (C)). *Id.* Additionally, DOE determined that the modifications to AHRI 920–2020 proposed in the July 2021 NOPR would be unlikely to significantly increase burden, given that DOE is referencing the prevailing industry test procedure. Therefore, presuming widespread usage of that test standard, DOE determined that its adoption as part of the Federal test procedure would be expected to result in little additional cost, even with the minor modifications proposed. DOE also determined that the test procedure would not require manufacturers to redesign any of the covered equipment, would not require changes to how the equipment is manufactured, and would not impact the utility of the equipment. *Id.*

In the July 2021 NOPR, DOE requested comment on its understanding of the impact the test procedure proposals in the NOPR, specifically on DOE's conclusion that manufacturers would not incur any additional costs. 86 FR 36018, 36047.

AHRI, Carrier, and MIAQ agreed that manufacturers would not incur any additional costs due to the proposed DOE test procedure compared to current industry practices. (AHRI, No. 22, p. 10; Carrier, No. 20, p. 4; MIAQ, No. 19, p. 5) Carrier requested that DOE consider laboratory infrastructure capital costs when evaluating testing costs, stating that there is uncertainty as to whether test facilities can accommodate DX–DOASes with capacities as high as 324 lb/h. Carrier expressed concerns about testing units with VERS per the Option 1 methodology (which requires an additional psychrometric chamber) and stated that even Option 2 introduces additional complexity. Carrier recommended that, if there is a lack of testing capability for units with VERS, DOE should revise the definition of a basic model to not include VERS so that the performance of models with VERS can be represented using AEDMs. (Carrier, No. 20, p. 5)

The CA IOUs supported DOE permitting DX–DOASes with VERS to be tested under the Option 2 configuration for the time being in order to limit manufacturer test burden. The CA IOUs speculated that Option 1 may result in more accurate ratings. (CA IOUs, No. 25, p. 2) Additionally, in the August 2021 public meeting, AHRI noted that test laboratories have mostly overcome limitations that previously posed challenges to testing DX–DOASes according to AHRI 920. (AHRI, No. 18, p. 23)

Consistent with what DOE determined in the July 2021 NOPR, DOE has determined that by incorporating by reference the revised industry test standard, AHRI 920–2020, with certain modifications, the test procedure DOE is establishing (appendix B) is consistent with the industry standard and will not add undue industry test burden or incur any additional tests costs.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed/final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation

of a final regulatory flexibility analysis (FRFA) for any final rule where the agency was first required by law to publish a proposed rule for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *energy.gov/gc/office-general-counsel.*

DOE conducted an initial regulatory flexibility analysis (''IRFA'') as part of the July 7, 2021 NOPR, and determined that there are three domestic small businesses that manufacture DX–DOASes. 86 FR 36050. Based on stakeholder feedback, DOE revised its small business count to one domestic small business in the December SNOPR. DOE still tentatively concludes that the proposed test procedure in that NOPR would not present a significant burden to small manufacturers. 86 FR 72280. DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. The following sections detail DOE's FRFA for this test procedure rulemaking.

1. Need for, and Objective of, the Rule

The Energy Policy and Conservation Act, as amended (''EPCA''),[38] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C [39] of EPCA, Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This covered equipment includes small, large, and very large commercial package air conditioning and heating equipment. (42 U.S.C. 6311(1)(B)–(D))

DOE undertook this test procedure rulemaking to establish a DOE test procedure for DX–DOASes in response to updates to the relevant industry consensus standard, ASHRAE 90.1, Energy Standard for Buildings Except Low-Rise Residential Buildings, which, with its 2016 publication, both added efficiency standards and specified a test procedure for this equipment (*i.e.,* ANSI/AHRI 920–2015). As noted, DOE is adopting the updated version of that test procedure, AHRI 920–2020, with modifications, to ensure that the Federal test procedure for DX–DOASes meet the representativeness and burden requirements of 42 U.S.C. 6314(a)(2) and (3).

2. Significant Issues Raised in Response to the Initial Regulatory Flexibility Analysis

In the July 2021 NOPR, DOE requested comment on its proposal of the testing costs and timing of testing costs described in the IRFA. 86 FR 36018, 36050. In response to the July 2021 NOPR, AHRI expressed concern that having different metrics cited in ASHRAE Standard 90.1 and in the DOE's energy conservation standards would introduce additional costs of compliance from disharmonized requirements, and that these costs would be felt more acutely by small manufacturers. AHRI requested DOE delay its rulemaking until after ASHRAE 90.1 is updated to reflect AHRI 920–2020 as the new test procedure and include adjusted efficiency standards. (AHRI, No. 22, p. 11). Furthermore, MIAQ asserted that DOE does not have the authority to adopt AHRI 920–2020 as the national test procedure. MIAQ requested that DOE wait for AHRI 920–2020 and to be adopted in ASHRAE Standard 90.1 and for energy conservation standard levels to be established using the new metrics before finalizing this test procedure rulemaking. (MIAQ, No. 19, p. 6)

The CA IOUs expressed that there would be little value in delaying the finalization of a test procedure for DX–DOASes because an industry test procedure has been established with broad stakeholder engagement. (CA IOUs, No. 25, p. 2) The CA IOUs supported DOE's proposal to incorporate AHRI 920–2020 by reference, along with slight modifications, and encouraged DOE to expeditiously finalize the test procedure for DX–DOAS. The CA IOUs stated that DOE was triggered to review the coverage of DX–DOAS equipment as a result of ASHRAE 90.1–2016 (and to adopt standards for DX–DOASes within 18 months of the inclusion of DX–DOAS standards in ASHRAE 90.1–2016). (CA IOUs, No. 25, p. 1–2) The CA IOUs also stated that AHRI 920–2020 is the industry consensus test procedure for DX–DOAS equipment, and that it was developed through a collaborative process with a range of stakeholders. (CA IOUs, No. 25, p. 1)

As discussed in section III.C of this DX–DOAS test procedure final rule, DOE disagrees with assertions by commenters that it lacks the authority to adopt AHRI 920–2020. As discussed, ASHRAE 90.1–2016 for the first time included provisions specific to DX–DOASes. This triggered DOE's review of these new provisions to establish initial Federal energy conservation standards and test procedures for DX–DOASes. With respect to small, large, and very large commercial package air conditioning and heating equipment, EPCA directs that the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by AHRI or by ASHRAE, as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)). In this instance, the industry test procedure referenced in Standard 90.1 is AHRI 920–2015.

However, contrary to the commenters' suggestions, that is not the limit of DOE's considerations under EPCA for purposes of establishing the initial Federal test procedure for DX–DOASes. DOE must also ensure that test procedures established under 42 U.S.C. 6314 are reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle and are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) When first establishing a Federal test procedure for small, large, and very large commercial package air conditioning and heating equipment, nothing in 42 U.S.C. 6314 precludes DOE from deviating from the industry test procedure referenced in Standard 90.1 where DOE determines said industry test procedure does not meet the representativeness and burden requirements in 42 U.S.C. 6314(a)(2) and another test procedure is better able to produce results representative of an average use cycle and is not unduly burdensome to conduct.

In this instance, the industry test procedure referenced in Standard 90.1, AHRI 920–2015, has been superseded in the intervening years since DOE was first triggered to review the DX–DOAS provisions of Standard 90.1–2016. DOE acknowledges that DOE has previously stated that it will only consider an update to ASHRAE Standard 90.1 that modifies the referenced industry test procedure to be a trigger under the statute, as opposed to an update of just the industry test procedure itself. (*See*

[38] All references to EPCA in this document refer to the statute as amended through the Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021).

[39] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

e.g., 86 FR 35668, 35676 (July 7, 2021)). But that does not preclude DOE from considering the updated version of the industry test procedure (*i.e.,* AHRI 920–2020) when first establishing the DOE Federal test procedures where the referenced test procedure (AHRI 920–2015) does not meet the requirements of 42 U.S.C. 6314(a)(2).

For the reasons discussed in section III.C of this final rule, DOE has determined that AHRI 920–2015 is not reasonably designed to produce test results which reflect energy efficiency of DX–DOASes during a representative average use cycle and some components of AHRI 920–2015 are unnecessarily burdensome. AHRI 920–2020 resolves these flaws in AHRI 920–2015 and is better able to produce representative results with less burden. Accordingly, DOE has adopted AHRI 920–2020, with modifications, in this final rule.

Carrier requested that DOE consider laboratory infrastructure capital costs when evaluating testing costs, stating that there is uncertainty as to whether test facilities can accommodate DX–DOASes with capacities as high as 324 lb/h. Carrier expressed concerns about testing units with VERS per the Option 1 methodology (which requires an additional psychrometric chamber) and stated that even Option 2 introduces additional complexity. Carrier recommended that, if there is a lack of testing capability for units with VERS, DOE should revise the definition of a basic model to not include VERS so that the performance of models with VERS can be represented using AEDMs. (Carrier, No. 20, p. 5)

The CA IOUs supported DOE permitting DX–DOASes with VERS to be tested under the Option 2 configuration for the time being in order to limit manufacturer test burden. The CA IOUs speculated that Option 1 may result in more accurate ratings. (CA IOUs, No. 25, p. 2) Additionally, in the August 2021 public meeting, AHRI noted that test laboratories have mostly overcome limitations that previously posed challenges to testing DX–DOASes according to AHRI 920. (AHRI, No. 18, p. 23)

AHRI, Carrier, and MIAQ agreed with DOE's assessment that manufacturers would not incur any additional costs due to the proposed DOE test procedure compared to current industry practices. (AHRI, No. 22, p. 10; Carrier, No. 20, p. 4; MIAQ, No. 19, p. 5)

As discussed in section III.I of the DX–DOAS test procedure final rule, DOE has determined that by incorporating by reference the revised industry test standard, AHRI 920–2020, with certain modifications, the test procedure DOE is establishing (appendix B) is consistent with the industry standard. Therefore, DOE has concluded that the DX–DOAS test procedure outlined in this final rule is consistent with the industry standard and that it will not add undue industry test burden or cause manufactures to incur any additional tests costs, including small businesses.

3. Description and Estimate of the Number of Small Entities Affected

For manufacturers of small, large, and very large air-conditioning and heating equipment (including DX–DOASes), commercial warm-air furnaces, and commercial water heaters, the Small Business Administration (''SBA'') has set a size threshold which defines those entities classified as ''small businesses''. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of this rule. *See* 13 CFR part 121. The equipment covered by this final rule are classified under North American Industry Classification System (''NAICS'') code 333415,[40] ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

In reviewing the DX–DOAS market, DOE used company websites, marketing research tools, product catalogues, and other public information to identify companies that manufacture DX–DOASes. DOE screened out companies that do not meet the definition of ''small business'' or are foreign-owned and operated. DOE used subscription-based business information tools to determine headcount, revenue, and geographic presence of the small businesses.

As noted in the December 2021 SNOPR, DOE initially identified 16 manufacturers of DX–DOASes, of which three met the definition of a domestic small businesses. Based on stakeholder feedback, DOE revised its count to 12 manufacturers of DX–DOASes, of which one was identified as a domestic small business. 86 FR 72874, 72880.

Out of these 12 OEMs, DOE determined that there is one domestic small manufacturer. DOE understands the annual revenue of the small manufacturer to be approximately $66 million.

[40] The business size standards are listed by NAICS code and industry description and are available at: *www.sba.gov/document/support--table-size-standards* (Last Accessed July 29th, 2021).

4. Description of Compliance Requirements

In this final rule, DOE establishes a definition for unitary DOAS as a category of commercial package air conditioning and heating equipment and adopts a new test procedure for DX–DOASes, a subset of unitary DOASes, consistent with the current industry consensus test standard. This test procedure applies to all DX–DOASes for which ASHRAE 90.1–2019 specifies standards, with the exception of ground-water-source DX–DOASes. More specifically, DOE is updating 10 CFR 431.96, ''Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps,'' to adopt a new test procedure for DX–DOASes as follows: (1) incorporate by reference AHRI 920–2020, and the relevant industry standards referenced therein; (2) establish the scope of coverage for the DX–DOAS test procedure; (3) add definitions for unitary DOASes and DX–DOASes, as well as additional terminology required by the test procedure; (4) adopt ISMRE2 and ISCOP2 as measured according to the most recent applicable industry standard, as energy efficiency descriptors for dehumidification and heating mode, respectively; (5) provide instructions for testing DX–DOASes with certain specific components; and (6) establish representation requirements. DOE is also adding a new appendix B to subpart F of part 431, titled ''Uniform test method for measuring the energy consumption of dehumidifying direct expansion-dedicated outdoor air systems,'' (''appendix B'') that includes the new test procedure requirements for DX–DOASes. In conjunction, DOE is amending Table 1 in 10 CFR 431.96 to specify the newly added appendix B as the applicable test procedure for testing DX–DOASes. DOE has determined that the adopted test procedure will not be unduly burdensome to conduct.

DOE also tentatively determined in the July 2021 NOPR that the extent to which DOE is making modifications to the industry consensus test procedure (AHRI 920–2020), DOE is consistent with the industry consensus standard; and that the modifications are necessary, because absent such modifications, the industry test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. 86 FR 36018, 36046–36047. Additionally, DOE determined that the modifications to AHRI 920–2020 proposed in the July 2021 NOPR would

be unlikely to significantly increase burden, given that DOE is referencing the prevailing industry test procedure. Therefore, presuming widespread usage of that test standard, DOE determined that its adoption as part of the Federal test procedure would be expected to result in little additional cost, even with the minor modifications proposed. DOE also determined that the test procedure would not require manufacturers to redesign any of the covered equipment, would not require changes to how the equipment is manufactured, and would not impact the utility of the equipment. *Id.*

The testing of DX–DOASes as outlined in this final rule would not be required until 360 days after the issuance of this rule for representations made by manufacturers, or such time as DOE establishes DX–DOAS energy conservation standards. As such, the small manufacturer will have one year, at a minimum, to prepare for the testing detailed in this final rule should they not already be testing to AHRI 920–2020. Additionally, if the manufacturer is already testing to AHRI 920–2020, they would incur no additional costs as a result of this final rule.

DOE determined the cost to rate all models should the small manufacturer not already be testing to AHRI 920–2020. In its review of AHRI 920–2020, DOE determined the cost for third-party lab testing of basic models to range from $10,000 to $23,500 depending on validation class, equipment capacity, and equipment configuration. However, manufacturers are not required to perform laboratory testing on all basic models. Manufacturers may use alternative energy-efficiency determination methods (''AEDMs'') for determining the ISMRE2 and ISCOP2 (if applicable) in accordance with 10 CFR 429.70. An AEDM is a computer modeling or mathematical tool that predicts the performance of non-tested basic models. These computer modeling and mathematical tools, when properly developed, can provide a relatively straight-forward and reasonably accurate means to predict the energy usage or efficiency characteristics of a basic model of a given covered product or equipment and reduce the burden and cost associated with testing. Consistent with the July 2021 initial regulatory flexibility analysis, DOE initially estimated an average cost of approximately $200,000 per small manufacturer to certify, when making use of an AEDM. 86 FR 36018, 36049–36050. DOE estimates this to be less than 1percent of revenue for the small manufacturer. 86 FR 36018, 36049–36050.

5. Significant Alternatives Considered and Steps Taken To Minimize Significant Economic Impacts on Small Entities

DOE reduces burden on manufacturers, including small businesses, by allowing AEDMs in lieu of physical testing all basic models. The use of computer modeling is more time-efficient than physical testing. Without AEDMs, DOE estimates the conservative case to rate all basic models would exceed $6 million for the small manufacturer, as compared to the $200,000 per small manufacturer in this final rule analysis.

Additionally, DOE considered alternative test methods and modifications to the test procedure for DX–DOASes, and the Department has determined that there are no better alternatives than the modifications and test procedures proposed in this final rule, in terms of both meeting the agency's objectives and reducing burden. DOE examined relevant industry test standards, and the Department incorporated these standards in the proposed test procedures whenever appropriate to reduce test burden to manufacturers. Specifically, this final rule establishes a test procedure for DX–DOASes through incorporation by reference of AHRI 920–2020 with modifications that are not expected to increase test burden.

Additionally, individual manufacturers may petition for a waiver of the applicable test procedure. (*See* 10 CFR 431.401.) Also, Section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent ''special hardship, inequity, or unfair distribution of burdens'' that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 1003 for additional details.

C. Review Under the Paperwork Reduction Act of 1995

DOE's certification and compliance activities ensure accurate and comprehensive information about the energy and water use characteristics of covered products and covered equipment sold in the United States. Manufacturers of all covered products and covered equipment with applicable standards must submit a certification report before a basic model is distributed in commerce, annually thereafter, and if the basic model is redesigned in such a manner to increase the consumption or decrease the efficiency of the basic model such that the certified rating is no longer supported by the test data. Additionally, manufacturers must report when production of a basic model has ceased and is no longer offered for sale as part of the next annual certification report following such cessation. DOE requires the manufacturer of any covered product or covered equipment to establish, maintain, and retain the records of certification reports, of the underlying test data for all certification testing, and of any other testing conducted to satisfy the requirements of 10 CFR part 429, 10 CFR part 430, and/or 10 CFR part 431. Certification reports provide DOE and consumers with comprehensive, up-to date efficiency information and support effective enforcement.

DOE is not adopting certification or reporting requirements for DX–DOASes in this final rule. Certification of DX–DOAS would not be required until such time as DOE establishes DX–DOAS energy conservation standards and manufacturers are required to comply with those standards. DOE may consider proposals to establish certification requirements and reporting for DX–DOASes under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for DX–DOASes. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of

reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedure for DX–DOASes adopted in this final rule incorporates testing methods contained in certain sections of the following commercial standards: AHRI 920–2020, AHRI 1060–2018, ANSI/ASHRAE 37–2009, ANSI/ASHRAE 41.1–2013, ANSI/ASHRAE 41.6–2014, and ANSI/ASHRAE 198–2013. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

In this final rule, DOE incorporates by reference the following test standards:

(1) The test standard published by AHRI, titled ''2020 Standard for Performance Rating of Direct Expansion-Dedicated Outdoor Air System Units,'' AHRI Standard 920 (I–P)–2020. AHRI Standard 920 (I–P)–2020 is an industry-accepted test procedure for measuring the performance of DX-dedicated outdoor air system units. AHRI 920 (I–P)–2020 is available on AHRI's website at: *www.ahrinet.org/App_Content/ahri/files/STANDARDS/AHRI/AHRI_Standard_920_I-P_2020.pdf.*

(2) The test standard published by AHRI, titled ''2018 Standard for Performance Rating of Air-to-Air Exchangers for Energy Recovery Ventilation Equipment,'' AHRI Standard 1060 (I–P)–2018. AHRI Standard 1060 (I–P)–2018 is an industry-accepted test procedure for measuring the performance of air-to-air exchangers for energy recovery ventilation equipment. ANSI/AHRI Standard 1060 (I–P)–2018 is available on AHRI's website at: *www.ahrinet.org/App_Content/ahri/files/STANDARDS/AHRI/AHRI_Standard_1060_I-P_2018.pdf.*

(3) The test standard test standard published by ASHRAE, titled ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' ANSI/ASHRAE Standard 37–2009. ANSI/ASHRAE Standard 37–2009 is an industry-accepted test procedure for measuring the performance of electrically driven unitary air-conditioning and heat pump equipment. ANSI/ASHRAE Standard 37–2009 is available on ASHRAE's website (in partnership with Techstreet) at: *www.techstreet.com/ashrae/standards/ashrae-37-2009?product_id=1650947.*

(4) The test standard published by ASHRAE, titled ''Standard Method for Temperature Measurement,'' ANSI/ASHRAE Standard 41.1–2013. ANSI/ASHRAE Standard 41.1–2013 is an industry-accepted test procedure for measuring temperature. ANSI/ASHRAE Standard 41.1–2013 is available on ASHRAE's website (in partnership with Techstreet) at: *www.techstreet.com/ashrae/standards/ashrae-41-1-2013?product_id=1853241.*

(5) The test standard published by ASHRAE, titled ''Standard Method for Humidity Measurement,'' ANSI/ASHRAE Standard 41.6–2014. ANSI/ASHRAE Standard 41.6–2014 is an industry-accepted test procedure for measuring humidity. ANSI/ASHRAE Standard 41.6–2014 is available on ASHRAE's website (in partnership with Techstreet) at: *www.techstreet.com/ashrae/standards/ashrae-41-6-2014?product_id=1881840.*

(6) The test standard published by ASHRAE, titled ''Method for Test for Rating DX-Dedicated Outdoor Air Systems for Moisture Removal Capacity and Moisture Removal Efficiency,'' ANSI/ASHRAE Standard 198–2013. ANSI/ASHRAE Standard 198–2013 is an industry-accepted test procedure for measuring the performance of DX-dedicated outdoor air system units. ANSI/ASHRAE Standard 198–2013 is available on ASHRAE's website (in partnership with Techstreet) at: *www.techstreet.com/ashrae/standards/ashrae-198-2013?product_id=1852612.*

The following standards were previously approved for incorporation by reference in the section where they appear: AHRI 210/240–2008, AHRI 340/360–2007, AHRI 390–2003, ASHRAE 127–2007, AHRI 1230–2010, ISO Standard 13256–1.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

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

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, and Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on July 14, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters

the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 15, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE amends parts 429 and 431 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 429.43 by adding paragraph (a)(3) to read as follows:

§ 429.43 Commercial heating, ventilating, air conditioning (HVAC) equipment.

(a) * * *

(3) *Product-specific provisions for determination of represented values.* (i) Direct-expansion-dedicated outdoor air systems (DX–DOASes):

(A) Individual model selection:

(*1*) Representations for a basic model must be based on the least efficient individual model(s) distributed in commerce among all otherwise comparable model groups comprising the basic model, considering only individual models as provided in paragraph (a)(3)(i)(A)(*2*) of this section. For the purpose of this paragraph (a)(3), an ''otherwise comparable model group'' means a group of individual models distributed in commerce within the basic model that do not differ in components that affect energy consumption as measured according to the applicable test procedure specified at 10 CFR 431.96 other than those listed in Table 1 to paragraph (a)(3) of this section. An otherwise comparable model group may include individual models distributed in commerce with any combination of the components listed in Table 1 (or none of the components listed in Table 1). An otherwise comparable model group may consist of only one individual model.

(*2*) For a basic model that includes individual models distributed in commerce with components listed in Table 1 to paragraph (a)(3) of this section, the requirements for determining representations apply only to the individual model(s) of a specific otherwise comparable model group distributed in commerce with the least number (which could be zero) of components listed in Table 1 included in individual models of the group. Testing under this paragraph shall be consistent with any component-specific test provisions specified in section 2.2.2 of appendix B to subpart F of part 431.

TABLE 1 TO PARAGRAPH (a)(3)

Component	Description
Furnaces and Steam/Hydronic Heat Coils	Furnaces and steam/hydronic heat coils used to provide primary or supplementary heating.
Ducted Condenser Fans	A condenser fan/motor assembly designed for optional external ducting of condenser air that provides greater pressure rise and has a higher rated motor horsepower than the condenser fan provided as a standard component with the equipment.
Sound Traps/Sound Attenuators	An assembly of structures through which the supply air passes before leaving the equipment or through which the return air from the building passes immediately after entering the equipment, for which the sound insertion loss is at least 6 dB for the 125 Hz octave band frequency range.
VERS Preheat	Electric resistance, hydronic, or steam heating coils used for preheating outdoor air entering a VERS.

* * * * *

■ 3. Amend § 429.70 by revising the tables in paragraphs (c)(2)(iv) and (c)(5)(vi)(B) to read as follows:

§ 429.70 Alternative methods for determining energy efficiency and energy use.

* * * * *

(c) * * *

(2) * * *

(iv) * * *

Validation class	Minimum number of distinct models that must be tested per AEDM
Air-Cooled, Split and Packaged Air Conditioners (ACs) and Heat Pumps (HPs) less than 65,000 Btu/h Cooling Capacity (3-Phase).	2 Basic Models.
(A) Commercial HVAC Validation Classes	
Air-Cooled, Split and Packaged ACs and HPs greater than or equal to 65,000 Btu/h Cooling Capacity and Less than 760,000 Btu/h Cooling Capacity.	2 Basic Models.
Water-Cooled, Split and Packaged ACs and HPs, All Cooling Capacities	2 Basic Models.
Evaporatively-Cooled, Split and Packaged ACs and HPs, All Capacities	2 Basic Models.
Water-Source HPs, All Capacities	2 Basic Models.
Single Package Vertical ACs and HPs	2 Basic Models.
Packaged Terminal ACs and HPs	2 Basic Models.
Air-Cooled, Variable Refrigerant Flow ACs and HPs	2 Basic Models.
Water-Cooled, Variable Refrigerant Flow ACs and HPs	2 Basic Models.
Computer Room Air Conditioners, Air Cooled	2 Basic Models.
Computer Room Air Conditioners, Water-Cooled	2 Basic Models.
Direct Expansion-Dedicated Outdoor Air Systems, Air-cooled or Air-source Heat Pump, Without Ventilation Energy Recovery Systems.	2 Basic Models.
Direct Expansion-Dedicated Outdoor Air Systems, Air-cooled or Air-source Heat Pump, With Ventilation Energy Recovery Systems.	2 Basic Models.

Validation class	Minimum number of distinct models that must be tested per AEDM
Direct Expansion-Dedicated Outdoor Air Systems, Water-cooled, Water-source Heat Pump, or Ground Source Closed-loop Heat Pump, Without Ventilation Energy Recovery Systems.	2 Basic Models.
Direct Expansion-Dedicated Outdoor Air Systems, Water-cooled, Water-source Heat Pump, or Ground Source Closed-loop Heat Pump, With Ventilation Energy Recovery Systems.	2 Basic Models.
(B) Commercial Water Heater Validation Classes	
Gas-fired Water Heaters and Hot Water Supply Boilers Less than 10 Gallons	2 Basic Models.
Gas-fired Water Heaters and Hot Water Supply Boilers Greater than or Equal to 10 Gallons	2 Basic Models.
Oil-fired Water Heaters and Hot Water Supply Boilers Less than 10 Gallons	2 Basic Models.
Oil-fired Water Heaters and Hot Water Supply Boilers Greater than or Equal to 10 Gallons	2 Basic Models.
Electric Water Heaters	2 Basic Models.
Heat Pump Water Heaters	2 Basic Models.
Unfired Hot Water Storage Tanks	2 Basic Models.
(C) Commercial Packaged Boilers Validation Classes	
Gas-fired, Hot Water Only Commercial Packaged Boilers	2 Basic Models.
Gas-fired, Steam Only Commercial Packaged Boilers	2 Basic Models.
Gas-fired Hot Water/Steam Commercial Packaged Boilers	2 Basic Models.
Oil-fired, Hot Water Only Commercial Packaged Boilers	2 Basic Models.
Oil-fired, Steam Only Commercial Packaged Boilers	2 Basic Models.
Oil-fired Hot Water/Steam Commercial Packaged Boilers	2 Basic Models.
(D) Commercial Furnace Validation Classes	
Gas-fired Furnaces	2 Basic Models.
Oil-fired Furnaces	2 Basic Models.
(E) Commercial Refrigeration Equipment Validation Classes [1]	
Self-Contained Open Refrigerators	2 Basic Models.
Self-Contained Open Freezers	2 Basic Models.
Remote Condensing Open Refrigerators	2 Basic Models.
Remote Condensing Open Freezers	2 Basic Models.
Self-Contained Closed Refrigerators	2 Basic Models.
Self-Contained Closed Freezers	2 Basic Models.
Remote Condensing Closed Refrigerators	2 Basic Models.
Remote Condensing Closed Freezers	2 Basic Models.

[1] The minimum number of tests indicated above must be comprised of a transparent model, a solid model, a vertical model, a semi-vertical model, a horizontal model, and a service-over-the counter model, as applicable based on the equipment offering. However, manufacturers do not need to include all types of these models if it will increase the minimum number of tests that need to be conducted.

* * * * *

(B) * * *

(5) * * *

(vi) * * *

Equipment	Metric	Applicable tolerance (%)
Commercial Packaged Boilers	Combustion Efficiency	5 (0.05)
	Thermal Efficiency	5 (0.05)
Commercial Water Heaters or Hot Water Supply Boilers	Thermal Efficiency	5 (0.05)
	Standby Loss	10 (0.1)
Unfired Storage Tanks	R-Value	10 (0.1)
Air-Cooled, Split and Packaged ACs and HPs less than 65,000 Btu/h Cooling Capacity (3-Phase).	Seasonal Energy-Efficiency Ratio	5 (0.05)
	Heating Season Performance Factor	5 (0.05)
	Energy Efficiency Ratio	10 (0.1)
Air-Cooled, Split and Packaged ACs and HPs greater than or equal to 65,000 Btu/h Cooling Capacity and Less than 760,000 Btu/h Cooling Capacity.	Energy Efficiency Ratio	5 (0.05)
	Coefficient of Performance	5 (0.05)
	Integrated Energy Efficiency Ratio	10 (0.1)
Water-Cooled, Split and Packaged ACs and HPs, All Cooling Capacities.	Energy Efficiency Ratio	5 (0.05)
	Coefficient of Performance	5 (0.05)
	Integrated Energy Efficiency Ratio	10 (0.1)
Evaporatively-Cooled, Split and Packaged ACs and HPs, All Capacities.	Energy Efficiency Ratio	5 (0.05)
	Coefficient of Performance	5 (0.05)
	Integrated Energy Efficiency Ratio	10 (0.1)

Equipment	Metric	Applicable tolerance (%)
Water-Source HPs, All Capacities	Energy Efficiency Ratio	5 (0.05)
	Coefficient of Performance	5 (0.05)
	Integrated Energy Efficiency Ratio	10 (0.1)
Single Package Vertical ACs and HPs	Energy Efficiency Ratio	5 (0.05)
	Coefficient of Performance	5 (0.05)
Packaged Terminal ACs and HPs	Energy Efficiency Ratio	5 (0.05)
	Coefficient of Performance	5 (0.05)
Variable Refrigerant Flow ACs and HPs	Energy Efficiency Ratio	5 (0.05)
	Coefficient of Performance	5 (0.05)
	Integrated Energy Efficiency Ratio	10 (0.1)
Computer Room Air Conditioners	Net Sensible Coefficient of Performance	5 (0.05)
Direct Expansion-Dedicated Outdoor Air Systems	Integrated Seasonal Coefficient of Performance 2	10 (0.1)
	Integrated Seasonal Moisture Removal Efficiency 2	10 (0.1)
Commercial Warm-Air Furnaces	Thermal Efficiency	5 (0.05)
Commercial Refrigeration Equipment	Daily Energy Consumption	5 (0.05)

* * * * *

■ 4. Amend § 429.134 by adding paragraph (s) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(s) *Direct Expansion-Dedicated Outdoor Air Systems.* (1) If a basic model includes individual models with components listed at Table 1 of § 429.43(a)(3) and DOE is not able to obtain an individual model with the least number (which could be zero) of those components within an otherwise comparable model group (as defined in § 429.43(a)(3)(i)(A)(*1*)), DOE may test any individual model within the otherwise comparable model group.

(2) [Reserved].

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 5. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 6. Amend § 431.2 by revising the definition for ''Commercial HVAC & WH product'' to read as follows:

§ 431.2 Definitions.

* * * * *

Commercial HVAC & WH product means any small, large, or very large commercial package air-conditioning and heating equipment (as defined in § 431.92), packaged terminal air conditioner (as defined in § 431.92), packaged terminal heat pump (as defined in § 431.92), single package vertical air conditioner (as defined in § 431.92), single package vertical heat pump (as defined in § 431.92), computer room air conditioner (as defined in § 431.92), variable refrigerant flow multi-split air conditioner (as defined in § 431.92), variable refrigerant flow multi-split heat pump (as defined in § 431.92), unitary dedicated outdoor air system (as defined in § 431.92), commercial packaged boiler (as defined in § 431.82), hot water supply boiler (as defined in § 431.102), commercial warm air furnace (as defined in § 431.72), instantaneous water heater (as defined in § 431.102), storage water heater (as defined in § 431.102), or unfired hot water storage tank (as defined in § 431.102).

* * * * *

■ 7. Amend § 431.92 by:

■ a. Revising the definition for ''Basic model''; and

■ b. Adding, in alphabetical order, definitions for ''Direct expansion-dedicated outdoor air system, or DX–DOAS,'' ''Integrated seasonal coefficient of performance 2, or ISCOP2,'' ''Integrated seasonal moisture removal efficiency 2, or ISMRE2,'' ''Unitary dedicated outdoor air system, or unitary DOAS,'' and ''Ventilation energy recovery system, or VERS''.

The revision and additions read as follows:

§ 431.92 Definitions concerning commercial air conditioners and heat pumps.

* * * * *

Basic model includes:

(1) *Computer room air conditioners* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (*e.g.,* electric or gas), and which have the same or comparably performing compressor(s), heat exchangers, and air moving system(s) that have a common ''nominal'' cooling capacity.

(2) *Direct expansion-dedicated outdoor air system* means all units manufactured by one manufacturer, having the same primary energy source (*e.g.,* electric or gas), within a single equipment class; with the same or comparably performing compressor(s), heat exchangers, ventilation energy recovery system(s) (if present), and air moving system(s) that have a common ''nominal'' moisture removal capacity.

(3) *Packaged terminal air conditioner (PTAC) or packaged terminal heat pump (PTHP)* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (*e.g.,* electric or gas), and which have the same or comparable compressors, same or comparable heat exchangers, and same or comparable air moving systems that have a cooling capacity within 300 Btu/h of one another.

(4) *Single package vertical units* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (*e.g.,* electric or gas), and which have the same or comparably performing compressor(s), heat exchangers, and air moving system(s) that have a rated cooling capacity within 1500 Btu/h of one another.

(5) *Small, large, and very large air-cooled or water-cooled commercial package air conditioning and heating equipment* means all units manufactured by one manufacturer within a single equipment class, having the same or comparably performing compressor(s), heat exchangers, and air moving system(s) that have a common ''nominal'' cooling capacity.

(6) *Small, large, and very large water source heat pump* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (*e.g.,* electric or gas), and which have the same or comparable compressors, same or comparable heat exchangers, and

same or comparable ''nominal'' capacity.

(7) *Variable refrigerant flow systems* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (*e.g.,* electric or gas), and which have the same or comparably performing compressor(s) that have a common ''nominal'' cooling capacity and the same heat rejection medium (*e.g.,* air or water) (includes VRF water source heat pumps).

* * * * *

Direct expansion-dedicated outdoor air system, or DX–DOAS, means a unitary dedicated outdoor air system that is capable of dehumidifying air to a 55 °F dew point—when operating under Standard Rating Condition A as specified in Table 4 or Table 5 of AHRI 920–2020 (incorporated by reference, see § 431.95) with a barometric pressure of 29.92 in Hg—for any part of the range of airflow rates advertised in manufacturer materials, and has a moisture removal capacity of less than 324 lb/h.

* * * * *

Integrated seasonal coefficient of performance 2, or ISCOP2, means a seasonal weighted-average heating efficiency for heat pump dedicated outdoor air systems, expressed in W/W, as measured according to appendix B of this subpart.

Integrated seasonal moisture removal efficiency 2, or ISMRE2, means a seasonal weighted average dehumidification efficiency for dedicated outdoor air systems, expressed in lbs. of moisture/kWh, as measured according to appendix B of this subpart.

* * * * *

Unitary dedicated outdoor air system, or *unitary DOAS,* means a category of small, large, or very large commercial package air-conditioning and heating equipment that is capable of providing ventilation and conditioning of 100-percent outdoor air and is marketed in materials (including but not limited to, specification sheets, insert sheets, and online materials) as having such capability.

* * * * *

Ventilation energy recovery system, or VERS, means a system that preconditions outdoor ventilation air entering the equipment through direct or indirect thermal and/or moisture exchange with the exhaust air, which is defined as the building air being exhausted to the outside from the equipment.

* * * * *

■ 8. Section 431.95 is amended by:

■ a. Revising paragraphs (a) and (b);

■ b. Revising the introductory text of paragraph (c) and paragraph (c)(2);

■ c. Redesignating paragraphs (c)(3) and (4) as (c)(5) and (6); and

■ d. Adding new paragraphs (c)(3) and (4), and paragraph (c)(7).

The revisions and additions read as follows:

§ 431.95 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, DOE must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at DOE, and at the National Archives and Records Administration (NARA). Contact DOE at: the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202) 586–9127, *Buildings@ee.doe.gov, https://www.energy.gov/eere/buildings/building-technologies-office.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the sources in the following paragraphs of this section.

(b) *AHRI.* Air-Conditioning, Heating, and Refrigeration Institute, 2311 Wilson Blvd., Suite 400, Arlington, VA 22201; (703) 524–8800; *www.ahrinet.org.*

(1) ANSI/AHRI Standard 210/240–2008 (AHRI 210/240–2008), ''2008 Standard for Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment,'' ANSI-approved October 27, 2011, and updated by addendum 1 in June 2011 and addendum 2 in March 2012; IBR approved for § 431.96.

(2) AHRI Standard 310/380–2014 (''AHRI 310/380–2014''), ''Standard for Packaged Terminal Air-Conditioners and Heat Pumps,'' February 2014; IBR approved for § 431.96.

(3) ANSI/AHRI Standard 340/360–2007 (AHRI 340/360–2007), ''2007 Standard for Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment,'' ANSI-approved October 27, 2011, and updated by addendum 1 in December 2010 and addendum 2 in June 2011; IBR approved for § 431.96; appendix A to this subpart.

(4) ANSI/AHRI Standard 390–2003 (AHRI 390–2003), ''2003 Standard for Performance Rating of Single Package Vertical Air-Conditioners and Heat Pumps,'' dated 2003; IBR approved for § 431.96.

(5) AHRI Standard 920 (I–P) with Addendum 1 (''AHRI 920–2020''), ''2020 Standard for Performance Rating of Direct Expansion-Dedicated Outdoor Air System Units,'' copyright 2021; IBR approved for § 431.92; appendix B to this subpart.

(6) AHRI Standard 1060 (I–P) (''AHRI 1060–2018''), ''2018 Standard for Performance Rating of Air-to-Air Exchangers for Energy Recovery Ventilation Equipment,'' copyright 2018; IBR approved for appendix B to this subpart.

(7) ANSI/AHRI Standard 1230–2010 (AHRI 1230–2010), ''2010 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment,'' approved August 2, 2010, and updated by addendum 1 in March 2011; IBR approved for § 431.96.

(c) *ASHRAE.* American Society of Heating, Refrigerating and Air-Conditioning Engineers, 180 Technology Parkway, Peachtree Corners, Georgia 30092; (404) 636–8400; *www.ashrae.org.*

* * * * *

(2) ANSI/ASHRAE Standard 37–2009 (''ANSI/ASHRAE 37'' or ''ANSI/ASHRAE 37–2009''), ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' ASHRAE-approved June 24, 2009; IBR approved for § 431.96; appendices A and B to this subpart.

(3) ANSI/ASHRAE Standard 41.1–2013 (''ANSI/ASHRAE 41.1–2013''), ''Standard Method for Temperature Measurement,'' ANSI-approved January 30, 2013; IBR approved for appendix B to this subpart.

(4) ANSI/ASHRAE Standard 41.6–2014 (''ANSI/ASHRAE 41.6–2014''), ''Standard Method for Humidity Measurement,'' ANSI-approved July 3, 2014; IBR approved for appendix B to this subpart.

* * * * *

(7) ANSI/ASHRAE Standard 198–2013 (''ANSI/ASHRAE 198–2013''), ''Method of Test for Rating DX-Dedicated Outdoor Air Systems for Moisture Removal Capacity and Moisture Removal Efficiency,'' ANSI-approved January 30, 2013; IBR approved for appendix B to this subpart.

* * * * *

■ 9. Amend § 431.96 by:

■ a. Revising paragraph (a);

■ b. Redesignating table 1 to § 431.96 as table 1 to paragraph (b) and revising newly redesignated table 1 to paragraph (b); and

■ c. Designating the table in paragraph (d) as table 2 to paragraph (d).

The revisions read as follows:

§ 431.96 Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.

(a) *Scope.* This section contains test procedures for measuring, pursuant to EPCA, the energy efficiency of any small, large, or very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners and packaged terminal heat pumps, computer room air conditioners, variable refrigerant flow systems, single package vertical air conditioners and single package vertical heat pumps, and direct expansion-dedicated outdoor air systems.

(b) * * *

(2) * * *

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS

Equipment type	Category	Cooling capacity or moisture removal capacity [2]	Energy efficiency descriptor	Use tests, conditions, and procedures [1] in	Additional test procedure provisions as indicated in the listed paragraphs of this section
Small Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled, 3-Phase, AC and HP.	<65,000 Btu/h	SEER and HSPF	AHRI 210/240–2008 (omit section 6.5).	Paragraphs (c) and (e).
	Air-Cooled AC and HP	≥65,000 Btu/h and <135,000 Btu/h.	EER, IEER, and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	<65,000 Btu/h	EER	AHRI 210/240–2008 (omit section 6.5).	Paragraphs (c) and (e).
		≥65,000 Btu/h and <135,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
	Water-Source HP	<135,000 Btu/h	EER and COP	ISO Standard 13256–1 (1998).	Paragraph (e).
Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP	≥135,000 Btu/h and <240,000 Btu/h.	EER, IEER and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥135,000 Btu/h and <240,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Very Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP	≥240,000 Btu/h and <760,000 Btu/h.	EER, IEER and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥240,000 Btu/h and <760,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Packaged Terminal Air Conditioners and Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	Paragraph (g) of this section.	Paragraphs (c), (e), and (g).
Computer Room Air Conditioners.	AC	<65,000 Btu/h	SCOP	ASHRAE 127–2007 (omit section 5.11).	Paragraphs (c) and (e).
		≥65,000 Btu/h and <760,000 Btu/h.	SCOP	ASHRAE 127–2007 (omit section 5.11).	Paragraphs (c) and (e).
Variable Refrigerant Flow Multi-split Systems.	AC	<65,000 Btu/h (3-phase)	SEER	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
		≥65,000 Btu/h and <760,000 Btu/h.	EER	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	HP	<65,000 Btu/h (3-phase)	SEER and HSPF	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
		≥65,000 Btu/h and <760,000 Btu/h.	EER and COP	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Variable Refrigerant Flow Multi-split Systems, Water-source.	HP	<760,000 Btu/h	EER and COP	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	AHRI 390–2003 (omit section 6.4).	Paragraphs (c) and (e).
Direct Expansion-Dedicated Outdoor Air Systems.	All	<324 lbs. of moisture removal/hr.	ISMRE2 and ISCOP2	Appendix B of this subpart.	None.

[1] Incorporated by reference; see § 431.95.
[2] Moisture removal capacity is determined according to appendix B of this subpart.

* * * * *

■ 10. Add Appendix B to subpart F of part 431 to read as follows:

Appendix B to Subpart F of Part 431—Uniform Test Method For Measuring the Energy Consumption of Direct Expansion-Dedicated Outdoor Air Systems

Note: Beginning July 24, 2023, representations with respect to energy use or efficiency of direct expansion-dedicated outdoor air systems must be based on testing conducted in accordance with this appendix. Manufacturers may elect to use this appendix early.

1. Incorporation by Reference

DOE incorporated by reference in § 431.95, the entire standard for AHRI 920–2020, AHRI 1060–2018; ANSI/ASHRAE 37–2009, ANSI/ASHRAE 41.1–2013, ANSI/ASHRAE 41.6–2014, and ANSI/ASHRAE 198–2013. However, only enumerated provisions of

AHRI 920–2020, ANSI/ASHRAE 37–2009, ANSI/ASHRAE 41.6–2014, and ANSI/ASHRAE 198–2013, as listed in this section 1 are required. To the extent there is a conflict between the terms or provisions of a referenced industry standard and the CFR, the CFR provisions control.

1.1. AHRI 920–2020

(a) Section 3—Definitions, as specified in section 2.2.1(a) of this appendix;

(b) Section 5—Test Requirements, as specified in section 2.2.1(b) of this appendix;

(c) Section 6—Rating Requirements, as specified in section 2.2.1(c) of this appendix, omitting section 6.1.2 (but retaining sections 6.1.2.1–6.1.2.8) and 6.6.1;

(d) Section 11—Symbols and Subscripts, as specified in section 2.2.1(d) of this appendix;

(e) Appendix A—References—Normative, as specified in section 2.2.1(e) of this appendix; and

(f) Appendix C—ANSI/ASHRAE Standard 198 and ANSI/ASHRAE Standard 37 Additions, Clarifications and Exceptions—Normative, as specified in section 2.2.1(f) of this appendix.

1.2. ANSI/ASHRAE 37–2009

(a) Section 5.1—Temperature Measuring Instruments (excluding sections 5.1.1 and 5.1.2), as specified in sections 2.2.1(b) and (f) of this appendix;

(b) Section 5.2—Refrigerant, Liquid, and Barometric Pressure Measuring Instruments, as specified in section 2.2.1(b) of this appendix;

(c) Sections 5.3—Air Differential Pressure and Airflow Measurements, as specified in section 2.2.1(b) of this appendix;

(d) Sections 5.5(b)—Volatile Refrigerant Measurement, as specified in section 2.2.1(b) of this appendix;

(e) Section 6.1—Enthalpy Apparatus (excluding 6.1.1 and 6.1.3 through 6.1.6), as specified in section 2.2.1(b) of this appendix;

(f) Section 6.2—Nozzle Airflow Measuring Apparatus, as specified in section 2.2.1(b) of this appendix;

(g) Section 6.3—Nozzles, as specified in section 2.2.1(b) of this appendix;

(h) Section 6.4—External Static Pressure Measurements, as specified in section 2.2.1(b) of this appendix;

(i) Section 6.5—Recommended Practices for Static Pressure Measurements, as specified in section 2.2.1(f) of this appendix;

(j) Section 7.3—Indoor and Outdoor Air Enthalpy Methods, as specified in section 2.2.1(f) of this appendix;

(k) Section 7.4—Compressor Calibration Method, as specified in section 2.2.1(f) of this appendix;

(l) Section 7.5—Refrigerant Enthalpy Method, as specified in section 2.2.1(f) of this appendix;

(m) Section 7.6—Outdoor Liquid Coil Method, as specified in section 2.2.1(f) of this appendix;

(n) Section 7.7—Airflow Rate Measurement (excluding sections 7.7.1.2, 7.7.3, and 7.7.4), as specified in section 2.2.1(b) of this appendix;

(o) Table 1—Applicable Test Methods, as specified in section 2.2.1(f) of this appendix;

(p) Section 8.6—Additional Requirements for the Outdoor Air Enthalpy Method, as specified in section 2.2.1(f) of this appendix;

(q) Table 2b—Test Tolerances (I–P Units), as specified in sections 2.2.1(c) and 2.2(f) of this appendix; and

(r) Errata sheet issued on October 3, 2016, as specified in section 2.2.1(f) of this appendix.

1.3. ANSI/ASHRAE 41.6–2014

(a) Section 4—Classifications, as specified in section 2.2.1(f) of this appendix;

(b) Section 5—Requirements, as specified in section 2.2.1(f) of this appendix;

(c) Section 6—Instruments and Calibration, as specified in section 2.2.1(f) of this appendix;

(d) Section 7.1—Standard Method Using the Cooled-Surface Condensation Hygrometer as specified in section 2.2.1(f) of this appendix; and

(e) Section 7.4—Electronic and Other Humidity Instruments. As specified in section 2.2.1(f) of this appendix.

1.4. ANSI/ASHRAE 198–2013

(a) Section 4.4—Temperature Measuring Instrument, as specified in section 2.2.1(b) of this appendix;

(b) Section 4.5—Electrical Instruments, as specified in section 2.2.1(b) of this appendix;

(c) Section 4.6—Liquid Flow Measurement, as specified in section 2.2.1(b) of this appendix;

(d) Section 4.7—Time and Mass Measurements, as specified in section 2.2.1(b) of this appendix;

(e) Section 6.1—Test Room Requirements, as specified in section 2.2.1(b) of this appendix;

(f) Section 6.6—Unit Preparation, as specified in section 2.2.1(b) of this appendix;

(g) Section 7.1—Preparation of the Test Room(s), as specified in section 2.2.1(b) of this appendix;

(h) Section 7.2—Equipment Installation, as specified in section 2.2.1(b) of this appendix;

(i) Section 8.2—Equilibrium, as specified in section 2.2.1(b) of this appendix; and

(j) Section 8.4—Test Duration and Measurement Frequency, as specified in section 2.2.1(b) of this appendix.

2. Test Method

2.1. Capacity

Moisture removal capacity (in pounds per hour) and supply airflow rate (in standard cubic feet per minute) are determined according to AHRI 920–2020 as specified in section 2.2 of this appendix.

2.2. Efficiency

2.2.1. Determine the ISMRE2 for all DX–DOASes and the ISCOP2 for all heat pump DX–DOASes in accordance with the following sections of AHRI 920–2020 and the additional provisions described in this section.

(a) Section 3—Definitions, including the references to AHRI 1060–2018;

(i) Non-standard Low-static Fan Motor. A supply fan motor that cannot maintain external static pressure as high as specified in Table 7 of AHRI 920–2020 when operating at a manufacturer-specified airflow rate and that is distributed in commerce as part of an individual model within the same basic model of a DX–DOAS that is distributed in commerce with a different motor specified for testing that can maintain the required external static pressure.

(ii) Manufacturer-specified. Information provided by the manufacturer through manufacturer's installation instructions, as defined in Section 3.14 of AHRI 920–2020.

(iii) Reserved.

(b) Section 5—Test Requirements, including the references to Sections 5.1, 5.2, 5.3, 5.5, 6.1, 6.2, 6.3, 6.4, and 7.7 (not including Sections 7.7.1.2, 7.7.3, and 7.7.4) of ANSI/ASHRAE 37–2009, and Sections 4.4, 4.5, 4.6, 4.7, 5.1, 6.1, 6.6, 7.1, 7.2, 8.2, and 8.4 of ANSI/ASHRAE 198–2013;

(i) All control settings are to remain unchanged for all Standard Rating Conditions once system set up has been completed, except as explicitly allowed or required by AHRI 920–2020 or as indicated in the supplementary test instructions (STI). Component operation shall be controlled by the unit under test once the provisions in section 2.2.1(c) of this appendix are met.

(ii) Break-in. The break-in conditions and duration specified in section 5.6 of AHRI 920–2020 shall be manufacturer-specified values.

(iii) Reserved.

(c) Section 6—Rating Requirements (omitting sections 6.1.2 and 6.6.1), including the references to Table 2b of ANSI/ASHRAE 37–2009, and ANSI/ASHRAE 198–2013.

(i) For water-cooled DX–DOASes, the ''Condenser Water Entering Temperature, Cooling Tower Water'' conditions specified in Table 4 of AHRI 920–2020 shall be used. For water-source heat pump DX–DOASes, the ''Water-Source Heat Pumps'' conditions specified in Table 5 of AHRI 920–2020 shall be used.

(ii) For water-cooled or water-source DX–DOASes with integral pumps, set the external head pressure to 20 ft. of water column, with a $-0/+1$ ft. condition tolerance and a 1 ft. operating tolerance.

(iii) When using the degradation coefficient method as specified in Section 6.9.2 of AHRI 920–2020, Equation 20 applies to DX– DOAS without VERS, with deactivated VERS (see Section 5.4.3 of AHRI 920–2020), or sensible-only VERS tested under Standard Rating Conditions other than D.

(iv) Rounding requirements for representations are to be followed as stated in Sections 6.1.2.1 through 6.1.2.8 of AHRI 920–2020;

(d) Section 11—Symbols and Subscripts, including references to AHRI 1060–2018;

(e) Appendix A—References—Normative;

(f) Appendix C—ANSI/ASHRAE 198–2013 and ANSI/ASHRAE 37 Additions, Clarifications and Exceptions—Normative, including references to Sections 5.1, 6.5, 7.3, 7.4, 7.5, 7.6, 8.6, Table 1, Table 2b, and the errata sheet of ANSI/ASHRAE 37–2009, ANSI/ASHRAE 41.1–2013, Sections 4, 5, 6, 7.1, and 7.4 of ANSI/ASHRAE 41.6–2014, and AHRI 1060–2018;

(g) Appendix E—Typical Test Unit Installations—Informative, for information only.

2.2.2. Set-Up and Test Provisions for Specific Components. When testing a DX–DOAS that includes any of the features listed in Table 2.1 of this section, test in accordance with the set-up and test provisions specified in Table 2.1 of this section.

TABLE 2.1—TEST PROVISIONS FOR SPECIFIC COMPONENTS

Component	Description	Test provisions
Return and Exhaust Dampers.	An automatic system that enables a DX–DOAS Unit to supply and use some return air (even if an optional VERS is not utilized) to reduce or eliminate the need for mechanical dehumidification or heating when ventilation air requirements are less than design.	All dampers that allow return air to pass into the supply airstream shall be closed and sealed. Exhaust air dampers of DOAS units with VERS shall be open. Gravity dampers activated by exhaust fan discharge airflow shall be allowed to open by action of the exhaust airflow.
VERS Bypass Dampers	An automatic system that enables a DX–DOAS Unit to let outdoor ventilation air and return air bypass the VERS when preconditioning of outdoor ventilation is not beneficial.	Test with the VERS bypass dampers installed, closed, and sealed. However, VERS bypass dampers may be opened if necessary for testing with deactivated VERS for Standard Rating Condition D.
Fire/Smoke/Isolation Dampers.	A damper assembly including means to open and close the damper mounted at the supply or return duct opening of the equipment.	The fire/smoke/isolation dampers shall be removed for testing. If it is not possible to remove such a damper, test with the damper fully open. For any fire/smoke/isolation dampers shipped with the unit but not factory-installed, do not install the dampers for testing.
Furnaces and Steam/Hydronic Heat Coils.	Furnaces and steam/hydronic heat coils used to provide primary or supplementary heating.	Test with the coils in place but providing no heat.
Power Correction Capacitors	A capacitor that increases the power factor measured at the line connection to the equipment. These devices are a requirement of the power distribution system supplying the unit.	Remove power correction capacitors for testing.
Hail Guards	A grille or similar structure mounted to the outside of the unit covering the outdoor coil to protect the coil from hail, flying debris and damage from large objects.	Remove hail guards for testing.
Ducted Condenser Fans	A condenser fan/motor assembly designed for optional external ducting of condenser air that provides greater pressure rise and has a higher rated motor horsepower than the condenser fan provided as a standard component with the equipment.	Test with the ducted condenser fan installed and operating using zero external static pressure, unless the manufacturer specifies use of an external static pressure greater. than zero, in which case, use the manufacturer-specified external static pressure.
Sound Traps/Sound Attenuators.	An assembly of structures through which the supply air passes before leaving the equipment or through which the return air from the building passes immediately after entering the equipment for which the sound insertion loss is at least 6 dB for the 125 Hz octave band frequency range.	Removable sound traps/sound attenuators shall be removed for testing. Otherwise, test with sound traps/attenuators in place.
Humidifiers	A device placed in the supply air stream for moisture evaporation and distribution. The device may require building steam or water, hot water, electric or gas to operate.	Remove humidifiers for testing.
UV Lights	A lighting fixture and lamp mounted so that it shines light on the conditioning coil, that emits ultraviolet light to inhibit growth of organisms on the conditioning coil surfaces, the condensate drip pan, and/other locations within the equipment.	Remove UV lights for testing.
High-Effectiveness Indoor Air Filtration.	Indoor air filters with greater air filtration effectiveness than MERV 8 or the lowest MERV filter distributed in commerce, whichever is greater.	Test with a MERV 8 filter or the lowest MERV filter distributed in commerce, whichever is greater

2.2.3. Optional Representations. Test provisions for the determination of the metrics indicated in paragraphs (a) through (d) of this section are optional and are determined according to the applicable provisions in section 2.2.1 of this appendix. The following metrics in AHRI 920–2020 are optional:

(a) $ISMRE2_{70}$;

(b) $COP_{Full,x}$:

(c) $COP_{DOAS,x}$: and

(d) ISMRE2 and ISCOP2 for water-cooled DX–DOASes using the ''Condenser Water Entering Temperature, Chilled Water'' conditions specified in Table 4 of AHRI 920–2020 and for water-source heat pump DX–DOASes using the ''Water-Source Heat Pump, Ground-Source Closed Loop'' conditions specified in Table 5 of AHRI 920–2020.

2.3 Synonymous Terms

(a) Any references to energy recovery or energy recovery ventilator (ERV) in AHRI 920–2020 and ANSI/ASHRAE 198–2013 shall be considered synonymous with ventilation energy recovery system (VERS) as defined in § 431.92.

(b) Reserved.

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

[Application No. D–12022]

Z–RIN 1210 ZA07

Proposed Amendment to Prohibited Transaction Class Exemption 84–14 (the QPAM Exemption)

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of proposed amendment to class exemption.

SUMMARY: This document gives notice of a proposed amendment to prohibited transaction class exemption 84–14 (the QPAM Exemption). The QPAM Exemption provides relief from certain prohibited transaction restrictions of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and Title II of ERISA, as codified in the Internal Revenue Code of 1986, as amended (the Code).

DATES: Written comments and requests for a public hearing on the proposed amendment to the class exemption must be submitted to the Department within September 26, 2022. The Department proposes that the amendment, if granted, will be effective 60 days after the date of publication of the final amendment in the **Federal Register**.

ADDRESSES: All written comments and requests for a hearing concerning the proposed amendment to the class exemption should be sent to the Office of Exemption Determinations through the Federal eRulemaking Portal and identified by Application No. D–12022:

Federal eRulemaking Portal: http://www.regulations.gov at Docket ID number: EBSA–2022–0008. Follow the instructions for submitting comments.

See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Erin Scott Hesse, telephone (202) 693–8546, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Comment Instructions

All comments and requests for a hearing must be received by the end of the comment period. Requests for a hearing must state the issues to be addressed and include a general description of the evidence to be presented at the hearing. In light of the current circumstances surrounding the COVID–19 pandemic, persons are encouraged to submit all comments electronically and not to submit paper copies. The comments and hearing requests may be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW, Washington, DC 20210; however, the Public Disclosure Room may be closed for all or a portion of the comment period due to circumstances surrounding the COVID–19 pandemic. Comments and hearing requests will also be available online at *http://www.regulations.gov,* at Docket ID number: EBSA–2022–0008 and *http://www.dol.gov/ebsa,* at no charge.

Warning: All comments received will be included in the public record without change and will be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or unlisted phone number), or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the *http://www.regulations.gov* website is an ''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide it.

Background

Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), broadly prohibits transactions between plans and ''parties in interest''—in general, people or entities closely connected to the plans. Title II of ERISA, codified in the Internal Revenue Code, as amended (the Code), includes parallel prohibitions applicable to tax-qualified plans [1] and ''disqualified persons.'' Absent an exemption, ERISA section 406(a)(1)(A) through (D) and Code section 4975(c)(1)(A) through (D) prohibit, among other things, sales, leases, loans, and the provision of services between these parties. Congress enacted these prohibitions to protect plans, their participants and beneficiaries (including beneficiaries of IRAs), and IRA owners [2] from the potential for abuse that arises when plans and IRAs engage in transactions with closely connected parties. Title I of ERISA and the Code include statutory exemptions from the prohibited transaction provisions, and the Department has authority to grant additional administrative prohibited transaction exemptions on an individual or class basis under ERISA section 408(a) and Code section 4975(c)(2).[3] Before granting an administrative exemption, these provisions require the Secretary of Labor to find that the exemption is: (i) administratively feasible, (ii) in the interests of the plans and their participants and beneficiaries and IRA owners, and (iii) protective of the rights of plan participants and beneficiaries and IRA owners.

The QPAM Exemption permits an investment fund [4] holding assets of plans and IRAs that is managed by a ''qualified professional asset manager'' (QPAM) to engage in transactions with ''parties in interest'' or ''disqualified persons'' to a plan or an IRA, subject to protective conditions. The proposed amendment would modify Section I(g) of the exemption, a provision under which a QPAM may become ineligible to rely on the QPAM Exemption for a period of 10 years if the QPAM, various affiliates, or five percent or more owners of the QPAM are convicted of certain crimes. The proposed amendment would: (1) require a one-time notice to the Department that a QPAM is relying upon the exemption, (2) require up-front terms in a written management agreement that apply in the event of ineligibility, (3) update the list of crimes in current Section I(g) to explicitly include foreign crimes that are substantially equivalent to the listed

[1] These include employee benefit plans as well as individual retirement accounts and individual retirement annuities (together, IRAs).

[2] For purposes of this proposed exemption, the term ''IRA owner'' refers to the individual for whom an IRA (as defined in the proposed exemption) is established.

[3] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. (2018), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor. Therefore, this notice of proposed amendment to the QPAM Exemption is issued solely by the Department.

[4] For purposes of the QPAM Exemption, an investment fund includes single customer and pooled separate accounts maintained by an insurance company, individual trusts, and common, collective, or group trusts maintained by a bank, and any other account or fund subject to the discretionary authority of the QPAM. *See* Section VI(b) of the QPAM Exemption.

crimes, (4) expand the circumstances that may lead to ineligibility, and (5) provide a one-year winding-down period to help plans and IRAs avoid or minimize possible negative impacts of terminating or switching QPAMs or adjusting asset management arrangements when a QPAM becomes ineligible. The proposed amendment would also: (1) provide clarifying updates to Section I(c) regarding a QPAM's authority over investment decisions, (2) adjust the asset management and equity thresholds in the QPAM definition in Section VI(a), and (3) add a new recordkeeping provision in Section VI(t). The amendment would affect participants and beneficiaries of plans, owners of IRAs, the sponsoring employers of such plans or IRAs (if applicable), QPAMs, and counterparties engaging in transactions covered under the QPAM Exemption.

The QPAM Exemption [5]

In 1984, the Department granted the QPAM Exemption to permit an investment fund managed by a QPAM to engage in a broad range of transactions with parties in interest with respect to a plan, subject to protective conditions. All references in the QPAM Exemption to ''plan'' also include a plan described in Code section 4975(e)(1), such as an IRA.[6] The reference to ''parties in interest'' includes ''disqualified persons'' under the Code.[7] Throughout this preamble, all references to ''Plan'' include IRAs, and all references to ''parties in interest'' include ''disqualified persons.'' [8]

The Department developed and granted the QPAM Exemption based on the premise that its broad exemptive relief from the prohibitions of ERISA section 406(a)(1)(A) through (D) and Code section 4975(c)(1)(A) through (D) could be afforded for transactions in which a Plan engages with a party in interest only if the commitments and investments of Plan assets and the negotiations leading thereto are the sole responsibility of an independent investment manager.

Part I of the QPAM Exemption (the General Exemption) provides broad prohibited transaction relief for a QPAM-managed investment fund to engage in transactions with parties in interest, but it does not include relief for the QPAM to engage in any transactions involving its own self-dealing and conflicts of interest, which are prohibited under ERISA section 406(b)(1) through (3) and 4975(c)(1)(E) and (F). This important limitation on the relief in the QPAM Exemption serves as a key protection for Plans that are affected by the exemption. The QPAM Exemption also includes conditions designed to ensure that the QPAM does not engage in transactions with parties in interest that have the power to influence the QPAM's decision-making processes. Additionally, QPAMs remain subject to the fiduciary duties of prudence and undivided loyalty, set forth in ERISA section 404, with respect to their client Plans.

In proposing the QPAM Exemption, the Department expressly indicated that any entity acting as a QPAM, and those who are in a position to influence the QPAM's policies, are expected to maintain a high standard of integrity.[9] Accordingly, the exemption includes Section I(g), which provides that a QPAM is ineligible to rely on the exemption for a period of 10 years if the QPAM, various affiliates, or five percent or more owners of the QPAM are convicted of certain crimes. Ineligibility begins as of the date of the judgment of the trial court, regardless of whether the judgment remains under appeal.

The Qualified Professional Asset Manager

As noted above, the QPAM Exemption provides relief for various party in interest transactions involving Plan assets that are transferred to a QPAM for discretionary management, subject to the protective conditions in the exemption. A QPAM is defined as a bank, savings and loan association, insurance company, or a registered investment adviser that meets specified standards regarding financial size and acknowledges in a written management agreement that it is a fiduciary with respect to each Plan that retains it as a QPAM. The Department noted in the 1982 proposed exemption that these categories of asset managers are subject to regulation by federal or state agencies and expressed the view that large financial services institutions would be able to withstand improper influence from parties in interest (*i.e.,* maintain independence).[10] The Department believed, and continues to believe that, as a general matter, transactions entered into on behalf of Plans with parties in interest are most likely to conform to ERISA's general fiduciary standards when the decision to enter into the transaction is made by an independent fiduciary.

The QPAM's independence and discretionary control over asset management decisions protect Plans from the danger that parties in interest will exercise improper influence over decision-making with regard to Plan assets. The QPAM acts as a fundamental protection against the possibility that parties in interest could otherwise favor their own competing financial interests at the expense of Plans, their participants and beneficiaries, and IRA owners. Because the Department relies upon the QPAM as a key protection against such improper conduct and the threat posed by conflicts of interest, it is critically important that the QPAM, and those who are in a position to influence its policies, maintain a high standard of integrity. Under the exemption, QPAMs must have the authority to make decisions on a discretionary basis without direct oversight for each transaction by other Plan fiduciaries. Given the scope of their discretion, it is imperative that the QPAM, its affiliates, and owners avoid engaging in criminal conduct and other serious misconduct that would jeopardize Plan assets or call into question the Department's reliance on their oversight as a key safeguard for Plan participants and beneficiaries and IRA owners.

Covered Transactions

The QPAM Exemption consists of four separate parts. The General Exemption set forth in Part I provides broad exemptive relief for a fund managed by a QPAM to engage in a wide variety of transactions described in ERISA section 406(a)(1)(A) through (D) and the corresponding prohibitions of Code section 4975(c)(1)(A) through (D) with virtually all parties in interest other than those parties who are most likely to have the power to influence the QPAM.[11] The General Exemption covers

[5] Class Exemption for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers, 49 FR 9494 (Mar. 13, 1984) as corrected at 50 FR 41430 (Oct. 10, 1985), as amended at 66 FR 54541 (Oct. 29, 2001), 70 FR 49305 (Aug. 23, 2005), and 75 FR 38837 (July 6, 2010).

[6] *See* Section VI(n) of the QPAM Exemption.

[7] *See* Section VI(f) of the QPAM Exemption.

[8] Although the Department is using the same definition of ''plan'' in the proposed amendment, the Department is proposing a ministerial change which will capitalize this term. References throughout this preamble will therefore use the term ''Plan.''

[9] Proposed Class Exemption for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers, 47 FR 56945, 56947 (Dec. 21, 1982) (Proposed QPAM Exemption).

[10] Proposed QPAM Exemption, 47 FR at 56947.

[11] The QPAM Exemption does not extend to transactions described in PTE 2006–16 (relating to securities lending arrangements), PTE 83–1 (relating to acquisitions of interests in mortgage pools), and PTE 82–7 (relating to certain mortgage financing arrangements). *See* Section I(b).

many different types of transactions. For example, the exemption provides relief for a QPAM to use fund assets to purchase an asset from a party in interest to a Plan that is invested in the fund. The General Exemption also facilitates much more complex transactions, such as when a QPAM designs a fund to replicate the return of certain commodities indices by investing in futures, structured notes, total return swaps, and other derivatives where a party in interest to a Plan that invested in the fund is involved in the transaction.[12]

As a result of the prohibited transaction relief in the exemption, the QPAM can streamline its compliance with the prohibited transaction provisions of Title I of ERISA and the Code. The QPAM will generally not need to keep and routinely check a list of parties in interest before engaging in a transaction to avoid inadvertently entering into a prohibited transaction with potentially hundreds, if not thousands, of parties in interest. The QPAM also will not have to seek an individual exemption or, alternatively, forgo investment opportunities that would be in the interest of Plans invested in the investment fund merely because a party in interest is involved.

In addition to the General Exemption, the QPAM Exemption also contains additional ''Specific Exemptions'' in Parts II, III, and IV. Part II of the exemption provides limited prohibited transaction relief for certain transactions involving those employers and certain of their affiliates that could not qualify for the General Exemption in Part I. Paragraph (a) of Part II provides conditional relief for employers and their affiliates to furnish limited amounts of goods and services to an investment fund managed by the QPAM, while paragraph (b) of Part II permits such employers and their affiliates to lease office or commercial space from an investment fund managed by the QPAM.

Part III provides relief for an investment fund managed by the QPAM to lease office or commercial space to the QPAM, an affiliate of the QPAM, or a person who could not qualify under Part I because the person holds powers to appoint or terminate a QPAM as a manager of the Plan's assets as described in subparagraph (a)(1) of Part I of the exemption.

Part IV provides relief for a place of public accommodation owned by the investment fund to furnish services and facilities to all parties in interest if the services and facilities are furnished on a comparable basis to the general public. These specific exemptions provide relief from the specified portions of ERISA section 406(a) and 406(b) and the parallel provisions of Code section 4975(c)(1).

The QPAM Exemption was amended in 2010 to add a new Part V, which permits a QPAM to rely upon the prohibited transaction relief in Parts I, III, or IV to manage an investment fund containing the assets of a Plan sponsored by the QPAM or an affiliate.[13] In recognition of the fact that a QPAM does not have the requisite independence from itself or an affiliate for these transactions, paragraphs (b) and (c) of Part V requires the QPAM to adopt written policies and procedures designed to ensure compliance with the exemption conditions and submit to an annual independent exemption audit. The audit must address compliance with the required policies and procedures and the applicable objective requirements of the relevant parts of the exemption.

Conditions

The conditions of Part I work to ensure that the QPAM is an independent decision maker that will not be influenced by parties in interest closely linked to the Plans that are invested in the QPAM-managed fund. Section I(a) reflects this intention by generally excluding transactions with parties in interest that would be able to appoint or terminate the QPAM or negotiate the terms of the management agreement with the QPAM.[14]

Section I(c) provides that transactions entered into pursuant to the exemption must be negotiated by or under the authority and general direction of the QPAM, and that either the QPAM or (so long as the QPAM retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines and established and administered by the QPAM, makes the decision on behalf of the investment fund to enter into the transaction. Further, Section I(c) provides that the transaction must not be part of an agreement, arrangement, or understanding designed to benefit a party in interest. This language is intended to preclude, for example, transactions that are negotiated by an employer but later presented to the QPAM for approval.[15] Section I(d) provides that transactions with the QPAM or a person ''related'' to the QPAM (within the meaning of Section VI(h) of the exemption) are excluded from the prohibited transaction relief offered by the exemption. Section I(e) provides that transactions with a party in interest with respect to a Plan whose assets make up more than 20% of the total client assets managed by the QPAM are excluded from the prohibited transaction relief offered by the exemption.[16] Section I(f) requires the terms of each transaction to be at least as favorable to the fund as the terms generally available in an arm's length transaction between unrelated parties.

Section I(g) provides for ineligibility under the QPAM Exemption if the QPAM, various affiliates, or five percent or more owners of the QPAM are convicted of certain crimes.[17] Specifically, Section I(g) currently states:

> Neither the QPAM nor any affiliate thereof (as defined in section VI(d)), nor any owner, direct or indirect, of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of: Any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or any other crime described in section 411 of ERISA. For purposes of this section (g), a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.[18]

[12] *See, e.g.,* Notice of Proposed Exemption involving Credit Suisse AG, 79 FR 52365, 52367 (Sept. 3, 2014).

[13] Amendment to Prohibited Transaction Exemption (PTE) 84–14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers, 75 FR 38837 (July 6, 2010). The ''Definitions and General Rules'' were redesignated as Part VI.

[14] Section I(a) was amended in 2005 to permit transactions involving parties in interest and disqualified persons with respect to a Plan if the assets of the Plan managed by the QPAM in the fund, when combined with the assets of other Plans established by the same employer or an affiliate and managed in the same fund, represent less than 10 percent of the assets of the investment fund. 70 FR 49305 (Aug. 23, 2005).

[15] Proposed QPAM Exemption, 47 FR at 56947.

[16] For purposes of Section I(e), the Plan's assets are combined with the assets of other Plans maintained by the same employer or an affiliate or the same employee organization that are managed by the QPAM.

[17] *See* 75 FR 38837 (July 6, 2010) for the text of the QPAM Exemption that is in effect unless and until this proposed amendment is finalized.

[18] ERISA section 411 includes: robbery, bribery, extortion, embezzlement, fraud, grand larceny,

The exemption defines ''affiliate'' to include parties in control relationships with the QPAM; parties for which the QPAM is a five percent or more partner or owner; directors, relatives, or partners of the QPAM; and officers and employees who are highly compensated or who have authority with respect to Plan assets.[19]

Additional conditions are applicable to the specific exemptions set forth in Parts II through V of the exemption.

Purpose and Approach for the Proposed Amendment

Substantial changes have occurred in the financial services industry since the Department granted the QPAM Exemption in 1984. These changes include industry consolidation caused by a variety of factors and an increasingly global reach for financial services institutions, both in their affiliations and in their investment strategies, including those for Plan assets. In the years since 1984, the Department has repeatedly considered applications for individual exemptions after convictions for crimes causing ineligibility under Section I(g). The Department has gained extensive experience dealing with corporate convictions giving rise to QPAM ineligibility (both domestically and in foreign jurisdictions) pursuant to Section I(g), and the Department determined that an ineligibility condition tied to criminal convictions continues to provide necessary protection to Plans, their participants and beneficiaries, and IRA owners.

In practice, Section I(g) has effectively required QPAMs that become ineligible but wish to continue to rely on the QPAM Exemption to seek an individual exemption from the Department. Since 2013, the Department has received an increasing number of individual exemption requests involving Section I(g) ineligibility as a result of criminal convictions occurring within the corporate family of large financial institutions. Among other things, applicants must fully and accurately disclose the conduct that led to their ineligibility, including whether the QPAM was involved; the specific reasons they should be permitted to continue acting as a QPAM notwithstanding the criminal conduct; the efforts they have undertaken to promote a culture of compliance; and the steps they are prepared to take in the future to ensure Plans, their participants and beneficiaries, and IRA owners are protected. In order to make its finding under ERISA section 408(a) and Code section 4975(c)(2) when the Department has granted individual exemptions that permit continued reliance on the QPAM Exemption after a conviction, it has insisted on the imposition of additional protections, such as a comprehensive independent compliance audit, and taken action to ensure that Plans are permitted to withdraw from the asset management arrangement without penalty and will be indemnified or held harmless in the event of future misconduct.

Exemption applicants have repeatedly and consistently represented to the Department that Plan investors would be harmed if a QPAM abruptly lost exemptive relief as of the conviction date, as dictated by Section I(g). Although ineligibility as a result of Section I(g) does not bar a QPAM from acting as a discretionary asset manager for Plan assets after a conviction, applicants have informed the Department that the loss of exemptive relief has the potential to disrupt Plan investments and investment strategies, including with respect to counterparties to certain transactions who are also relying upon the prohibited transaction relief in the QPAM Exemption.[20] Plans may also experience transition costs if a Plan fiduciary needs to find an alternative asset manager. To avoid immediate disruption and cost to Plan asset management arrangements due to an expected conviction, the Department has granted several one-year temporary individual exemptions to QPAMs facing ineligibility to provide the Department with sufficient time to engage in a more intensive review regarding whether a longer-term individual exemption is warranted.[21] Moreover, since 2013, both the one-year and longer-term exemptions have routinely given Plans the right to exit the relationship with an ineligible QPAM without the imposition of any fees, penalties, or charges.

As discussed in greater detail below, these developments have prompted the Department to propose this amendment to the QPAM Exemption, which would: (1) require a one-time notice to the Department that a QPAM is relying upon the exemption, (2) require up-front terms in a written management agreement that apply in the event of ineligibility, (3) update the list of crimes in current Section I(g) to explicitly include foreign crimes that are substantially equivalent to the listed crimes,[22] (4) expand the circumstances that may lead to ineligibility, (5) provide a one-year winding-down period to help Plans avoid or minimize possible negative impacts of changing QPAMs or adjusting their asset management arrangements when a QPAM becomes ineligible, and (6) instruct entities applying for individual exemption relief based on ineligibility under Section I(g) to review the Department's most recent individual exemptions involving Section I(g) ineligibility with an expectation that similar conditions will be required if an exemption is proposed and granted.

The amendment also would: (1) make a clarifying revision to Section I(c) that specifies that the terms of the transaction, commitments, investment of fund assets, and any corresponding negotiations are the sole responsibility of the QPAM; (2) increase the asset management and equity thresholds in the QPAM definition in Section VI(a) commensurate with changes in the Consumer Price Index since 1984; and (3) add a standard recordkeeping provision in new Section VI(t).

The Department is proposing this amendment on its own motion, pursuant to ERISA section 408(a) and Code section 4975(c)(2) and in accordance with the procedures set forth in 29 CFR part 2570 (76 FR 66637 (October 27, 2011)).

Proposed Amendment to Section I(g)—Reporting to the Department, Written Management Agreement, and Ineligibility

Subsection I(g)(1)—Reporting to the Department

To ensure that the Department is aware of entities that rely on the QPAM Exemption for prohibited transaction relief, the Department is proposing to require each QPAM to report such

burglary, arson, a felony violation of Federal or State law involving substances defined in section 802(6) of title 21, murder, rape, kidnaping, perjury, assault with intent to kill, any crime described in section 80a–9(a)(1) of title 15, a violation of any provision of this chapter, a violation of section 186 of this title, a violation of chapter 63 of title 18, a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401), any felony involving abuse or misuse of such person's position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan, or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element.

[19] *See* Section VI(d).

[20] *See, e.g.,* Notice of Proposed Exemption involving JP Morgan Chase & Co., 81 FR 83372, 83363 (Nov. 21, 2016).

[21] In such cases, the Department requires prominent notice be provided to client Plans along with additional protective conditions to ensure Plan assets are protected while longer-term prohibited transaction relief is considered.

[22] This is consistent with the Department's longstanding view and intended to remove all doubt about foreign convictions, as discussed in more detail below.

reliance by email to the Department. Each QPAM that relies upon the exemption must report the legal name of each business entity relying upon the exemption (and any name the QPAM may be operating under) in the email to the Department.[23] The QPAM must only provide this notification to the Department once unless there is a change to the legal name or operating name(s) of the QPAM relying upon the exemption. The Department intends to keep a current list of entities relying upon the QPAM Exemption on its publicly available website. The Department requests comment on whether it should require additional identifying information, such as the CRD number of a registered investment adviser and whether banks, savings and loan associations, and insurance companies have similar identifying information that they should be required to provide.

Subsection I(g)(2)—Written Management Agreement

The fundamental premise of Section I(g) is to require QPAMs to act with integrity. Therefore, the proposed amendment would require QPAMs to include certain standards of integrity required under the exemption in a written management agreement with its client Plans (the Written Management Agreement). Specifically, the proposed amendment would require QPAMs to include a provision in their Written Management Agreement providing that in the event the QPAM, its Affiliates, and five percent or more owners engage in conduct resulting in a Criminal Conviction or receipt of a written Ineligibility Notice (described in more detail below), the QPAM would not restrict its client Plan's ability to terminate or withdraw from its arrangement with the QPAM.[24] This amendment would prevent QPAMs from imposing any fees, penalties, or charges on client Plans in connection with terminating or withdrawing from a QPAM-managed investment fund.[25]

The QPAM would also be required to include a provision in its Written Management Agreement that would require it to indemnify, hold harmless, and promptly restore actual losses to each client Plan for any damages directly resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such QPAM to remain eligible for relief under the QPAM Exemption as a result of conduct that leads to a Criminal Conviction or Ineligibility Notice. Actual losses include losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 as a result of a QPAM's inability to rely upon the relief in the QPAM Exemption. The QPAM also must agree not to employ or knowingly engage any individual that participated in the conduct that is the subject of a Criminal Conviction or Ineligibility Notice. These terms must apply for a period of at least 10 years from the Ineligibility Date.[26]

Subsection I(g)(3) and Sections VI(r) and VI(s)—Types of Misconduct and Entities That Cause Ineligibility

Criminal Convictions

Although the Department has a longstanding practice of considering individual exemption applications from QPAMs in connection with *foreign* convictions, the proposed definition of Criminal Conviction would remove any doubt that Section I(g) of the QPAM Exemptions applies to foreign convictions that are substantially equivalent to the listed U.S. federal or state crimes.[27] Moreover, the Department reiterates that the date of conviction (whether foreign or domestic) triggers ineligibility under the current QPAM Exemption and the proposed amendment, rather than the time any particular instance of misconduct occurred.[28] The timing of ineligibility is provided in proposed Section I(h).

As amended, proposed subsection I(g)(3)(A), covers the same U.S. federal and state crimes as the current QPAM Exemption, and the proposed definition of Criminal Conviction in Section VI(r) expressly covers foreign convictions. The Department's modifications also are intended to make clear that all crimes listed in the definition and applicable under Section I(g) are covered by the provision, regardless of whether they also are expressly referenced in ERISA section 411. Although the definition of Criminal Conviction broadly includes the convictions listed in ERISA section 411, the modified text makes clear that the listed convictions are not limited by any other part or aspect of ERISA section 411.

Proposed subsection VI(r)(2) makes clear that relevant convictions include specified foreign convictions. Specifically, Section I(g)'s ineligibility provision, as amended, would apply to convictions ''by a foreign court of competent jurisdiction for any crime . . . however denominated by the laws of the relevant foreign government, that is substantially equivalent to'' one of the U.S. federal or state crimes identified in subsection VI(r)(1).

The Department includes the specific reference to foreign convictions in the proposed amendment to eliminate any ambiguity regarding whether the identified crimes in current Section I(g) extend to foreign convictions.[29] Given that financial services institutions increasingly have a global reach, both in their affiliations and in their investment strategies, transactions involving Plan assets are increasingly likely to involve entities that reside and operate in foreign jurisdictions. An ineligibility provision that is limited to U.S. federal and state convictions would ignore these realities and provide insufficient protection for Plans investing through a QPAM's international affiliates. Moreover, the Department continues to

[23] For instance, assume a corporate family is comprised of legal entities named: Corporate Parent A, Investment Manager B, Broker-Dealer C, Retail Bank D, and Institutional Bank E (doing business as InstiBank). Investment Manager B and Institutional Bank E are the only entities acting as QPAMs. Investment Manager B would notify the Department that it is acting as a QPAM and its legal name is Investment Manager B. Institutional Bank E would notify the Department that it is acting as a QPAM and its legal name is Institutional Bank E, but it is doing business as InstiBank.

[24] The terms ''Criminal Conviction'' and ''Ineligibility Notice'' are discussed in more detail below.

[25] This would not apply to reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors would be excepted. If such fees, penalties, or charges occur, they must be applied consistently and in a like manner to all such investors.

[26] The term ''Ineligibility Date'' is discussed in more detail below.

[27] *See, e.g.,* Prohibited Transaction Exemption (PTE) 2020–01, 85 FR 8020 (Feb. 12, 2020); PTE 2019–01, 84 FR 6163 (Feb. 26, 2019); PTE 2016–11, 81 FR 75150 (Oct. 28, 2016); PTE 2016–10, 81 FR 75147 (Oct. 28, 2016); PTE 2012–08, 77 FR 19344 (March 30, 2012); PTE 2004–13, 69 FR 54812 (Sept. 10, 2004); and PTE 96–62 (''EXPRO'') Final Authorization Numbers 2003–10E, 2001–02E, and 2000–30E, available at *https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/exemptions/expro-exemptions-under-pte-96-62.*

[28] In this regard, the Department notes that that any foreign conviction within the last ten years falls within the scope of Section I(g). This applies even to misconduct that occurred during the period between the letter from the Department's Office of the Solicitor to the Securities Industry and Financial Markets Association (SIFMA) dated November 2, 2020, and the letter from the Department's Office of the Solicitor to SIFMA, dated March 23, 2021 (both regarding the treatment of foreign convictions under Section I(g) of the QPAM Exemption).

[29] Questions regarding the applicability of foreign convictions have been raised in advisory opinion requests and in connection with individual exemption requests.

believe that criminal convictions for the types of crimes identified in the QPAM Exemption are relevant to a QPAM's ability to manage Plan assets with integrity, care, and undivided loyalty, regardless of whether the crime occurs in a domestic or foreign jurisdiction. Foreign crimes of the sort described in the proposed amendment call into question a firm's culture of compliance just as much as domestic crimes. Fraud, embezzlement, tax evasion, and the other listed crimes are signs of potential serious compliance and integrity failures, whether prosecuted domestically or in foreign jurisdictions.

In addition, if foreign convictions were not included in Section I(g), the exemption would potentially impose more lenient conditions on foreign-based conglomerates than U.S.-based entities, which was not the Department's intent. In order to make the statutory findings for issuing exemptions dictated by ERISA section 408(a) and Code section 4975(c)(2), the Department must find that an exemption is in the interest of and protective of the rights of Plans, their participants and beneficiaries, and IRA owners. The Department believes that it could not make these statutorily mandated findings if foreign convictions were not included within the scope of Section I(g). The Department requests comments on this section, including whether there are certain types or aspects of criminal behavior that deserve additional focus.

Prohibited Misconduct—Generally

The Department is also proposing to add a new category of misconduct that may lead to ineligibility under Section I(g), which is described in proposed subsection I(g)(3)(B) as ''participating in Prohibited Misconduct.'' Proposed Section VI(s) defines Prohibited Misconduct as (1) any conduct that forms the basis for a non-prosecution or deferred prosecution agreement that, if successfully prosecuted, would have constituted a crime described in Section VI(r); (2) any conduct that forms the basis for an agreement, however denominated by the laws of the relevant foreign government, that is substantially equivalent to a non-prosecution agreement or deferred prosecution agreement described in subsection VI(s)(1); (3) engaging in a systematic pattern or practice of violating the conditions of this exemption in connection with otherwise non-exempt prohibited transactions; (4) intentionally violating the conditions of this exemption in connection with otherwise non-exempt prohibited transactions; or (5) providing materially misleading information to the Department in connection with the conditions of the exemption.

For purposes of proposed Section VI(s), the term ''participating in'' refers not only to actively participating in the Prohibited Misconduct but also to knowingly approving of the conduct or having knowledge of such conduct without taking appropriate and proactive steps to prevent such conduct from occurring, including reporting the conduct to appropriate compliance personnel. When a QPAM's ineligibility is linked to Prohibited Misconduct under any portion of Section VI(s), the Department will provide affected entities with a written warning and an opportunity to be heard.[30] These due process protections are discussed in more detail below.

Overall, in the Department's view, QPAMs and those in a position to influence or control a QPAM's policies that repeatedly engage in criminal conduct or other egregious misconduct in connection with compliance with the conditions of the exemption do not display the requisite standards of integrity to rely on the relief provided in the exemption.

Prohibited Misconduct—Deferred Prosecution and Non-Prosecution Agreements

The Department's intention in proposing to add subsections VI(s)(1) and (2) is to ensure that QPAMs are not able to avoid the conditions related to integrity and ineligibility under Section I(g) simply by entering into non-prosecution and deferred prosecution agreements with prosecutors to side-step the consequences that otherwise would result from a Criminal Conviction. Plans may suffer significant harm if they are exposed to serious misconduct committed by unscrupulous firms or individuals that ultimately results in a deferred or non-prosecution agreement rather than a Criminal Conviction and its consequent ineligibility under Section I(g).

Prohibited Misconduct—Violations of the Exemption and Misleading Statements to the Department

The Department is proposing in subsections VI(s)(3) through (5) to condition eligibility for the exemption on the following additional components: (i) engaging in a systematic pattern or practice of violating the conditions of this exemption, (ii) intentionally violating the conditions of this exemption, or (iii) providing materially misleading information to the Department in connection with the exemption. These categories of misconduct weigh against the QPAM operating with integrity, which is necessary for the QPAM to continue relying on the broad prohibited transaction relief in the class exemption.

Engaging in such activities potentially exposes Plans, their participants and beneficiaries, and IRA owners to risk of harm and raises serious questions about the Department's reliance on the QPAM as a key protective component of the exemption. The Department believes that these components of the eligibility provision will encourage QPAMs to maintain an appropriate focus on compliance with legal requirements related to the exemption and the protection of Plans, their participants and beneficiaries, and IRA owners. In connection with a robust compliance infrastructure, a minor number of isolated violations of the conditions of the exemption would not constitute a systemic pattern or practice.

The Department determined that including these components in the Prohibited Misconduct definition strikes the appropriate balance of protecting Plans (and ultimately, participants, beneficiaries, and IRA owners) while not imposing a condition that is overly broad. The Department has determined that limiting eligibility in this manner serves as an important safeguard in connection with the broad discretion that a QPAM must have to utilize the relief in the exemption for itself and its client Plans.

With respect to these provisions, the Department intends to rely on its enforcement authority and program to detect a QPAM's participation in the types of misconduct included in subsections VI(s)(3) through (5). These components are constructed so that ineligibility occurs only in limited circumstances, and even in these circumstances, only after: (1) an investigation by the appropriate field office, and (2) the QPAM thereafter receives a written warning that the Department is considering issuing a written Ineligibility Notice. This written Ineligibility Notice process gives the QPAM the opportunity to be heard before the Department issues the notice, which would make the QPAM ineligible to use the exemption from the date the Department issues the notice, except that the mandatory one-year winding down period would be applicable, as discussed below.

[30] The Department notes that QPAMs, their Affiliates, and 5% or more owners that are criminally convicted receive due process through the formal judicial process.

Prohibited Misconduct—Request for Comments

The Department requests comment on the extent to which Section VI(s) is appropriately tailored to target the types of conduct that implicates integrity issues that should affect a QPAM's eligibility to use the exemption in circumstances where it or its five percent or more owners or Affiliates participate in non-criminal activity that has the potential to harm Plans and whether additional or alternative elements may be warranted. The Department also requests comments regarding whether it should treat any additional activities as Prohibited Misconduct. To the extent commenters believe additional activities should be added to the proposed list, the Department request comments explaining how such actions implicate the QPAM's integrity. The Department also requests comments as to whether any of the listed activities should not be included in the list of Prohibited Misconduct. To the extent commenters believe action(s) should be removed from the proposed list, the Department requests an explanation of why such action(s) do not implicate the QPAM's integrity and are not appropriately included. The Department also requests comments on whether the due process provisions that apply to the Prohibited Misconduct ineligibility events also should apply to the Criminal Conviction events—in whole or in part. The Department is particularly interested in receiving comments regarding whether and how the process should apply to foreign Criminal Convictions. For instance, should the process provide an opportunity for a QPAM to request the Department's determination regarding whether a foreign conviction is substantially equivalent to a domestic conviction? Should the Department consider particular factors such as the elements of the crime and the nature of the tribunal or investigating entity in making such a determination?

Entities Whose Criminal Convictions or Prohibited Misconduct May Cause Ineligibility of the QPAM

Section I(g) ineligibility currently applies upon convictions of QPAMs, their Affiliates, and five percent or more owners of the QPAM. The Department is not proposing any changes to this aspect of Section I(g). Therefore, the exemption retains this scope, including the ''control'' definition that pertains to part of the definition for establishing when an entity is considered an ''Affiliate'' of the QPAM, which specifically is defined as ''[a]ny person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with'' the QPAM.[31] This means that a QPAM's ineligibility is generally tied to convictions of entities that own five percent or more of the QPAM or are in control-based relationships with a QPAM. The Department notes that meaningful control can exist even with small ownership interests, such as when the entity with the ownership interest is in a position to influence the QPAM to act or refrain from acting in a certain manner, including being involved as a knowing or unknowing participant or benefactor in the conduct that forms the basis for a Criminal Conviction or Ineligibility Notice.

QPAMs should be careful when entering into joint ventures or other passive investment ventures where another entity's ownership interest could jeopardize the QPAM's ability to rely upon the QPAM Exemption. Such QPAMs should also be cognizant that another entity with an ownership interest in the QPAM could be using the QPAM, knowingly or not, to further its own criminal conduct or Prohibited Misconduct. Ultimately, any such conduct that results in a Criminal Conviction or Ineligibility Notice will cause the QPAM to become ineligible for the relief offered under the QPAM Exemption, implicate the terms of the Written Management Agreement (discussed above), and the conditions of the mandatory one-year winding-down period (discussed below) and may impact the QPAM's ability to obtain supplemental individual exemption relief.

Scope of ''Substantially Equivalent'' Foreign Crimes and Foreign Prohibited Misconduct and Requesting Review by the Department

If a foreign Criminal Conviction or foreign Prohibited Misconduct occurs, impacted QPAMs should interpret the scope of this provision broadly and consistent with the Department's statutorily mandated focus on the protection of plans in ERISA section 408(a) and Code section 4975(c)(2). In situations where a crime or foreign conduct raises particularly unique issues related to the substantial equivalence of the foreign Criminal Conviction or Prohibited Misconduct, the QPAM may seek the Department's view regarding whether the foreign crime, conviction, or misconduct is substantially equivalent to a U.S. federal or state crime or Prohibited Misconduct.

The QPAM will have an opportunity to present its position and have an opportunity to be heard. However, any QPAM submitting a request for review should do so promptly, and whenever possible in the case of a foreign conviction, before a judgment is entered so that the QPAM has sufficient time to complete the notice obligations under the proposed mandatory one-year winding-down period, discussed below.

The Department is interested in receiving comments regarding: (1) whether this process should be formalized in any way, such as by integrating this review with the process proposed in connection with an Ineligibility Notice (discussed below); and (2) whether the Department should consider particular factors, such as the elements of the crime and the nature of the tribunal or investigating entity in making its determination.

Proposed Section I(h)—Timing of Ineligibility

The proposed amendment would not change the ten-year ineligibility period under current Section I(g). Thus, under proposed subsection I(g)(3), a QPAM would remain ineligible to rely upon the QPAM Exemption for a period of ten years from the date of ineligibility (the Ineligibility Date). For Prohibited Misconduct, the ineligibility period begins as of the date of an Ineligibility Notice, whereas, for a Criminal Conviction, it begins on the date the trial court enters its judgment.[32] The proposed amendment makes it clear that for a foreign conviction, ineligibility would begin on ''the date of the judgment of any court in a foreign jurisdiction that is the equivalent of a U.S. federal or state trial court. . . .'' This refers to a trial court of original or primary jurisdiction, such as a court of first instance.[33] The period of ineligibility would begin on the conviction date, regardless of whether the judgment is appealed. Only upon a subsequent final judgment reversing the conviction would a person no longer be considered ''convicted'' under proposed subsection I(g)(3)(A).

With respect to Prohibited Misconduct, the QPAM would become

[31] The definition of affiliate also includes directors, relatives, or partners of those in control-based relationships as well as employees or officers that are highly compensated or have direct or indirect authority, responsibility, or control regarding custody, management, or disposition of plan assets. *See* Section VI(d) for a complete definition.

[32] For convictions that also result in imprisonment of a person, the end of the ten-year period is counted from the date of release from imprisonment.

[33] This is generally considered to be the lowest level court in a particular jurisdiction that has the power to render a judgment of conviction.

ineligible to rely upon the QPAM Exemption for a period of ten years from the date the Department issues the Ineligibility Notice. The Department seeks comments on the timing of ineligibility.

The Department believes that the approach originally contained in the QPAM Exemption and retained in the proposal for Criminal Convictions provides a consistent, administrable, and protective standard for determining the timing of ineligibility, including for convictions in foreign jurisdictions. A trial court's determination of wrongdoing is a more than adequate reason to trigger the conditions for the Written Management Agreement and initiate the winding-down period in the absence of an individual exemption permitting continued reliance on the QPAM Exemption after the Department's full consideration of the misconduct and steps taken by the firm to redress compliance concerns. This is true regardless of whether the parties have chosen to appeal the judgment. In the absence of an individual exemption, the loss of the ability to rely on the QPAM Exemption simply requires the firm to conduct its business in a manner that complies with the statutory prohibitions in Title I of ERISA and the Code. Permitting a firm to continue to rely on the QPAM Exemption—possibly for years—even after it has been found guilty by a trier of fact of serious criminal misconduct is inconsistent with the Department's responsibility to ensure that the exemption is in the interest of and sufficiently protects Plans, their participants and beneficiaries, and IRA owners, as required for the Department to make its findings under ERISA section 408(a) and Code section 4975(c)(2). At a minimum, in such circumstances, ineligible firms should be required to seek an individual exemption—based on a public record and full consideration of the implications of their criminal misconduct. This will ensure that the substantial relief from the statutory prohibitions that has been afforded to Plans through the QPAM Exemption is appropriately designed for the protection of Plans, their participants and beneficiaries, and IRA owners under a corresponding individual exemption.

Proposed Section I(i)—Warning and Opportunity To Be Heard in Connection With Prohibited Misconduct—Written Ineligibility Notice

Before issuing a written Ineligibility Notice in connection with Prohibited Misconduct, the Department will issue a written warning to the QPAM identifying the conduct implicating subsection I(g)(3)(B) and providing 20 days for the QPAM to respond. As noted above, the Department intends to rely on its enforcement authority and program to detect conduct that would lead to a written warning. If the QPAM does not respond to the written warning within 20 days, the Department will issue the written Ineligibility Notice. However, if the QPAM responds within the 20-day timeframe, the Department will provide the QPAM with the opportunity to be heard, in person (including by phone or videoconference on an internet-based platform), or in writing, or a combination, before the Department decides whether to issue the written Ineligibility Notice. The opportunity to be heard will be limited to one conference, which the Department will schedule within 30 days of the QPAM's response to the written warning, unless the Department determines in its sole discretion to allow additional conferences. The written Ineligibility Notice will articulate the basis for the Department's determination that the conduct described in subsection I(g)(3)(B) has occurred.

The Department requests comment on this process, specifically including the length of time to respond to a written warning and whether additional procedural protections should be incorporated.

Proposed Section I(j)—Mandatory One-Year Winding-Down Period

As part of this proposed amendment, the Department has included a mandatory one-year winding-down period that begins on the Ineligibility Date. The winding-down period is designed to accommodate a Plan's ability to wind down its relationship with the QPAM. Satisfaction of the conditions of the winding-down period would affect the availability of relief for all transactions covered by this exemption and directly implicates the requirements for the Written Management Agreement. This includes relief for past transactions and any transaction continued during the one-year winding-down period. Additionally, prohibited transaction relief during the winding-down period would be subject to compliance with all of the exemption's conditions other than Section I(g).

Once the winding-down period begins, relief under the QPAM Exemption would only be available for existing clients of the QPAM—*i.e.,* client Plans of the QPAM that had a pre-existing Written Management Agreement (as required under Section VI(a)) on the Ineligibility Date for transactions entered into before the Ineligibility Date. Thus, after the Ineligibility Date, the QPAM would be prohibited from engaging in new transactions in reliance on the QPAM Exemption for existing client Plans. Additionally, if the QPAM obtains new clients during the winding-down period, the exemption would not apply to transactions entered into on their behalf, unless such relief is granted in a separate individual exemption.

The Department designed the proposed winding-down period to mitigate the cost and disruption to Plans, their participants and beneficiaries, and IRA owners that can occur when a QPAM becomes ineligible for relief based on proposed subsection I(g)(3). The one-year winding-down period would provide a QPAM's client Plans with time to decide whether to hire an alternative discretionary asset manager that is eligible to operate as a QPAM or continue their relationship with the ineligible QPAM, which could only provide discretionary asset management services to them by engaging in transactions in a non-prohibited manner, relying on alternative exemptions, or pursuing alternative investment strategies. The Department believes that a one-year winding-down period would be necessary to ensure that Plans have sufficient time to engage in a search for an alternative QPAM or discretionary asset manager if they decide it is in the Plan's best interest to do so. The Department understands that searching for and hiring a new QPAM or discretionary asset manager can be complex and expensive and require care and time, including development of a request for proposal and an appropriate transition plan to transfer millions of dollars of investments from one manager to another without causing harm and losses, including lost opportunity costs, to the Plan.

The winding-down conditions would require the QPAM to provide notice of its ineligibility under subsection I(g)(3) to its existing client Plans and the Department (via *QPAM@dol.gov*) within 30 days after the Ineligibility Date. This notice must include an objective description of the facts and circumstances upon which the Criminal Conviction or Ineligibility Notice is based and be written with sufficient detail, consistent with the QPAM's duties of prudence and undivided loyalty, to fully inform a Plan fiduciary of the nature and severity of the criminal conduct or Prohibited Misconduct so that such Plan fiduciary is able to satisfy, as applicable, its own

fiduciary duties of prudence and loyalty under Title I of ERISA in the context of hiring, monitoring, evaluating, and retaining the QPAM.

Within 30 days after the Ineligibility Date, the QPAM must also notify its client Plans that, as required by subsection I(g)(2)(A) and (B), the QPAM will not restrict the client's ability to terminate or withdraw from its arrangement with the QPAM. Thus, the QPAM may not impose any fees, penalties, or charges on client Plans in connection with the process of terminating or withdrawing from a QPAM-managed investment fund except for reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. If such fees, penalties, or charges occur, they must be applied consistently and in a like manner to all such investors.

The notice would also indicate that as required by proposed subsection I(g)(2)(C), the QPAM will indemnify, hold harmless, and promptly restores losses to each client Plan for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out the QPAM's ineligibility under subsection I(g)(3). For purposes of this provision, actual losses specifically include losses and costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative discretionary asset manager.

Additionally, to ensure Plans are protected from bad actors, the QPAM must not employ or knowingly engage any individual that participated in conduct that is the subject of a Criminal Conviction or Ineligibility Notice. For Criminal Convictions, this applies regardless of whether the individual is separately convicted in connection with the criminal conduct. The QPAM must adhere to this requirement no later than the Ineligibility Date.

Because the Ineligibility Date commences the 30-day notice period, any financial services institution that has remote relationships with another institution should communicate with that institution to ensure that it is able to satisfy the notice and indemnity conditions of the winding-down period if the financial services institution is acting as a QPAM and will also become ineligible.

Finally, after the one-year period expires, the QPAM could not rely on the relief provided in the QPAM Exemption unless the Department grants the QPAM an individual exemption to continue relying upon the QPAM Exemption. The winding-down period would not be suspended while an individual exemption application is pending with the Department. The Department requests comments on the winding-down period, including whether one year is the appropriate length of time and whether there are additional protections for Plan participants and beneficiaries and IRA owners that the Department should consider.

Proposed Section I(k)—Requesting an Individual Exemption

The proposed amendment also would add new Section I(k) to the exemption, which provides that a QPAM that is ineligible or anticipates becoming ineligible may, consistent with the exemption procedures at set forth in 29 CFR part 2570, subpart B, apply for supplemental individual exemption relief. Section I(k) instructs an applicant, as part of such a request, to review the Department's most recently granted individual exemptions involving section I(g) ineligibility with the expectation that similar conditions will be required if an exemption is proposed and granted. If an applicant requests the Department to exclude any term or condition from its exemption that is included in a recently issued similar individual exemption, the applicant must accompany such request with a detailed explanation of the reason such change is necessary and in the interest of and protective of the Plan, its participants and beneficiaries, and IRA owners. The Department will review such requests consist with the requirements of ERISA section 408(a) and Code section 4975(c)(2).

Such applicants also should provide detailed information in their applications quantifying the specific cost or harms in dollar amounts, if any, Plans would suffer if a QPAM could not rely on the exemption after the winding-down period, including the specific dollar amounts of investment losses resulting from foregone investment opportunities and any evidence supporting the proposition that investment opportunities would only be available to Plans on less advantageous terms.

An applicant should not construe the Department's acceptance of an individual exemption application as a guarantee that the Department will grant an individual exemption. Therefore, a QPAM that submits an individual exemption application must ensure that it manages Plan assets prudently and loyally during the winding-down period with the expectation that the Department may not grant further exemptive relief.

The Department notes that, in order for it to make the necessary statutory findings under ERISA section 408(a) and Code section 4975(c)(2), applicants also should anticipate that the Department may condition individual exemptive relief on a certification by a senior executive officer of the QPAM (or comparable person) that: (1) all of the conditions of the winding-down period were met, and (2) an independent audit reviewing the QPAM's compliance with the conditions of the one-year winding-down period has been completed.

Applicants may also request more limited relief than is otherwise available under the QPAM Exemption. For instance, a QPAM may only need prohibited transaction relief for a particular limited category of transactions, such as an on-going lease that was entered into on behalf of an investment fund which is expected to continue past the one-year winding-down period. In such circumstances, due to the limited nature of the transaction(s) for which relief is sought, applicants should discuss the terms and conditions of prior individual exemptions involving Section I(g) in connection with a request for more limited prohibited transaction relief. The applicant also should include a detailed explanation in its application regarding how Plans will be otherwise protected and why the transaction cannot be unwound prior to the end of the winding-down period without harm or losses to such Plans.

Finally, the Department notes that an applicant anticipating that it will need relief beyond the end of the winding-down period should apply to the Department for an individual exemption as soon as practicable. As a fiduciary, the QPAM has obligations with respect to Plans beyond those required by the QPAM Exemption and should approach the Department at the earliest point at which it appears a conviction will occur, such as when a plea agreement has been entered into—even if the conviction date has not yet occurred—to ensure that appropriate steps can be taken by or on behalf of its client Plans who ultimately would be impacted by the QPAM's loss of exemptive relief. QPAMs affected by a conviction also should not wait until late in the winding-down period to apply for an individual exemption.

Proposed Amendment to Section I(c)—Involvement in Investment Decisions by Parties in Interest

The Department is proposing to modify the language in Section I(c) consistent with its original intent when granting the QPAM Exemption. In the 1984 grant notice, the Department stated that an essential premise of the exemption is that broad prohibited transaction relief can be afforded:

> [O]nly if the commitments and investments of plan assets and the negotiations leading thereto, are the sole responsibility of an independent investment manager. It appears to the Department that, if exemptive relief were to be provided where the QPAM has less than ultimate discretion over acquisitions for an investment fund that it manages, the potential for decision making with regard to plan assets that would inure to the benefit of a party in interest would be increased.[34]

The proposed amendatory language in Section I(c) is intended to make clear that a QPAM must not permit other parties in interest to make decisions regarding Plan investments under the QPAM's control. Therefore, the Department is proposing to include in the opening of Section I(c) a statement providing that the terms of the transaction, ''commitments, investment of fund assets, and any corresponding negotiations on behalf of the Investment Fund are the sole responsibility of the QPAM . . . .'' The Department also proposes to add additional amendatory language at the end of Section I(c) stating that the prohibited transaction relief in the exemption applies ''only in connection with an Investment Fund that is established primarily for investment purposes'' and that ''[n]o relief is provided under this exemption for any transaction that has been planned, negotiated, or initiated by a Party in Interest, in whole or in part, and presented to a QPAM for approval because the QPAM would not have sole responsibility with respect to the transaction as required by this section I(c).'' This language aligns with the following language from the original 1982 proposal for the QPAM Exemption:

> Party in interest transactions that are negotiated by, *e.g.,* an employer which sponsors a plan, and are then presented to a QPAM for approval would not qualify for the class exemption as proposed. However, the exemption, as proposed, would be available even though the transfer of assets by a plan to a QPAM is subject to general investment guidelines, so long as there is no arrangement, direct or indirect, for the QPAM to negotiate, or engage in, any specific transaction or to benefit any specific person.[35]

The Department has determined that adding this additional clarifying language in Section I(c) would eliminate any possible ambiguity regarding the extent to which a party in interest may be involved in a transaction with an investment fund managed by a QPAM. A party in interest should not be involved in any aspect of a transaction, aside from certain ministerial duties and oversight associated with plan transactions, such as providing general investment guidelines to the QPAM. The role of the QPAM under the terms of the exemption is not to act as a mere independent approver of transactions. Rather, the QPAM must have and exercise discretion over the commitments and investments of Plan assets and the related negotiations with respect to a fund that is established primarily for investment purposes in order for the relief provided under the exemption to apply.[36]

Proposed Amendment to Section VI(a)—Asset Management and Equity Thresholds

The QPAM Exemption was originally granted, in part, on the premise that large financial services institutions would be able to withstand improper influence from parties in interest. The asset management and equity thresholds were included to set minimum size thresholds that would help ensure a QPAM would be able to withstand that influence. In 2005, the Department finalized an amendment to the QPAM Exemption that included updating the asset management and shareholders' and partners' equity thresholds for registered investment advisers in the QPAM definition in subsection VI(a)(4) of the exemption. In connection with that amendment, the Department indicated that the original thresholds ''may no longer provide significant protections for plans in the current financial marketplace'' and adjusted the figures based on changes in the Consumer Price Index.[37] The Department has determined that the same rationale necessitates further updates to the registered investment adviser thresholds and those of other types of QPAMs, such as banks and insurance companies, which have not been updated since 1984. The Department determined to adjust all the thresholds in Section VI(a) based on the original published figures in the 1984 grant notice. This will ensure that changes to the thresholds for all types of financial institutions reflect the same baseline change to the Consumer Price Index (*i.e.,* 1984 vs. 2021).[38] By publication through notice in the **Federal Register**, the Department will also make subsequent annual adjustments for inflation to the Equity Capital, Net Worth, and asset management thresholds in subsection VI(a)(1) through (4), rounded to the nearest $10,000, no later than January 31st of each year.

Therefore, in all places in subsection VI(a)(1) through (3) that currently indicate a $1,000,000 threshold, the Department is proposing to adjust those figures to $2,720,000. In subsection VI(a)(4), the Department is proposing to adjust the current assets under management threshold of $85,000,000 to $135,870,000, and the shareholders' and partners' equity and the broker-dealer net worth thresholds of $1,000,000 to $2,040,000.

As a minor ministerial change, the Department is also proposing to replace ''Federal Savings and Loan Insurance Corporation'' with ''Federal Deposit Insurance Corporation'' in subsection VI(a)(2) because the Federal Savings and Loan Insurance Corporation was abolished by Congress in 1989, and its responsibilities were transferred to the Federal Deposit Insurance Corporation.[39]

Proposed Amendment Adding Section VI(t)—Recordkeeping

The proposed amendment also includes a new recordkeeping requirement in Section VI(t), which would require QPAMs to maintain records for six years demonstrating compliance with this exemption. The Department is proposing this amendment to ensure that evidence of compliance is available for review and to make the QPAM Exemption consistent with other exemptions that generally impose a recordkeeping requirement on parties relying on an exemption to ensure they will be able to demonstrate, and that the Department

[34] 49 FR at 9497.

[35] 47 FR at 56947.

[36] For example, the QPAM Exemption is unavailable if a plan sponsor hires a QPAM to engage a plan in transactions that do not include an investment component, such as hiring a party in interest service provider for a welfare plan. It is also unavailable when a plan sponsor desires to enter into a party in interest transaction with its plan but leaves the ultimate determination and review to a QPAM.

[37] Proposed Amendment to PTE 84–14, 68 FR 52419, 52423 (Sept. 3, 2003).

[38] For purposes of these changes, the Department used March 1984 and December 2021 as the relevant dates in the U.S. Bureau of Labor Statistics CPI Inflation Calculator available at: *https://www.bls.gov/data/inflation_calculator.htm.*

[39] *See* Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101–73 (1989).

will be able to verify, compliance with the exemption conditions.

Section VI(t) would require that the records be kept in a manner that is reasonably accessible for examination. The records must be made available, to the extent permitted by law, to any authorized employee of the Department or the Internal Revenue Service or another federal or state regulator; any fiduciary of a plan invested in an investment fund managed by the QPAM; any contributing employer and any employee organization whose members are covered by a Plan invested in an investment fund managed by the QPAM; and any participant or beneficiary of a Plan or IRA owner invested in an investment fund managed by the QPAM.

QPAMs also would be required to make such records reasonably available for examination at their customary location during normal business hours. Participants and beneficiaries of a Plan, IRA owners, plan fiduciaries, and contributing employers/employee organizations would be able to request only information applicable to their own transactions, and not a QPAM's privileged trade secrets or privileged commercial or financial information, or confidential information regarding other individuals. If the QPAM refuses to disclose information to a party other than the Department on the basis that the information is exempt from disclosure, the Department would require the QPAM to provide a written notice, within 30 days, advising the requestor of the reasons for the refusal and that the Department may request such information. The requestor would then be able to contact the Department if it believes it would be useful for the Department to request the information.

Any failure to maintain the records necessary to determine whether the conditions of the exemption have been met would result in the loss of the relief provided under the exemption only for the transaction or transactions for which such records are missing or have not been maintained. Such failure would not affect the relief for other transactions if the QPAM maintains required records for such transactions.

Other Ministerial Changes

The Department is also proposing a few ministerial changes to the QPAM Exemption that would not substantively alter the conditions or relief provided under the exemption. Specifically, the Department proposes to: (1) change the headings of each portion of the exemption from ''Part'' to ''Section'', (2) remove many internal cross-references to definitional provisions and instead capitalize the terms used in those definitional provisions throughout the exemption,[40] and (3) add internal references to ''above'' and ''below'' throughout to direct readers where to find certain cross-referenced provisions.

The Department has corrected two minor typographical errors by changing: (1) ''assure'' to ''ensure'' in Section V and the related audit provision in Section VI(q), and (2) ''INHAM'' to ''QPAM'' in Section VI(p). All references to ''ERISA'' and the ''Code'' have been updated so that they come before the sections referenced, and references to the term ''employee benefit plan'' have been removed so that the exemption uses only the term ''Plan.'' Finally, the definitional term ''Control'' in Section VI(e) has been amended to specifically refer to variations of the word ''control'' used throughout the exemption. Therefore, Section VI(e) now defines the terms ''Controlling,'' Controlled by,'' ''under Common Control,'' and ''Controls'' in the same manner as the prior single term ''control.''

Regulatory Impact Analysis

Executive Orders 12866, 13563, and Administrative Laws

The Department has examined the effects of this proposed amendment as required by Executive Order 12866,[41] Executive Order 13563,[42] the Paperwork Reduction Act of 1995,[43] the Regulatory Flexibility Act,[44] section 202 of the Unfunded Mandates Reform Act of 1995,[45] Executive Order 13132,[46] and the Congressional Review Act.[47]

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866, ''significant'' regulatory actions are subject to review by the Office of Management and Budget (OMB).[48] Section 3(f) of the Executive Order defines a ''significant regulatory action'' as an action that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as ''economically significant''); (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB, informed by the Department's analysis, has determined that this proposed amendment is economically significant within the meaning of section 3(f)(1) of the Executive Order because it may have an annual effect of $100 million or more on the economy, as discussed in the Transfers section, below.

The Department has quantified the impact of the proposed amendment based on the best available data and provides an assessment of its benefits, costs, and transfers below. Based on this assessment, the Department concludes that the proposed amendment's benefits would justify its costs. Pursuant to the Congressional Review Act, OMB anticipates designating a revised QPAM amendment, if finalized as proposed, as a ''major rule,'' as defined by 5 U.S.C. 804(2).

Need for Regulation

Substantial changes have occurred in the financial services industry since the Department granted the QPAM Exemption in 1984. These changes include industry consolidation caused by a variety of factors and an increasingly global reach for financial services institutions, both in their affiliations and in their investment strategies, including those for Plan assets.

An amendment to the QPAM Exemption is needed to address ambiguity as to whether foreign convictions are included in the scope of the ineligibility provision under Section I(g). QPAMs today often have corporate

[40] However, for the sake of clarity, cross-references have been retained for the term ''Affiliate'' because it is defined in different ways under Section VI(c) and (d) of the exemption.

[41] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

[42] Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 18, 2011).

[43] 44 U.S.C. 3506(c)(2)(A) (1995).

[44] 5 U.S.C. 601 *et seq.* (1980).

[45] 2 U.S.C. 1501 *et seq.* (1995).

[46] Federalism, 64 FR 153 (Aug. 4, 1999).

[47] 5 U.S.C. 804(2) (1996).

[48] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

or relationship ties to a broad range of entities, some of which are located internationally. Additionally, some global financial service institutions are headquartered or have parent entities that reside in foreign jurisdictions. These entities may have significant control and influence over the operation and management of all entities within a large financial institution's organizational structure, including those operating as QPAMs for some Plans. Additionally, the international ties of QPAMs come not just from their affiliations and parent entities, but also their investment strategies, including those involving Plan assets.

The Department is also concerned about corporate families and entities that engage in significant misconduct of a similar type and quality as the conduct that might lead to a Criminal Conviction, but which ultimately does not result in a conviction. The amendment is needed to ensure that QPAMs are not able to avoid the conditions related to integrity and ineligibility under Section I(g) simply by entering into non-prosecution and deferred prosecution agreements with prosecutors to side-step the consequences that otherwise would result from a Criminal Conviction. Plans may suffer significant harm if they are exposed to serious misconduct committed by unscrupulous firms or individuals that ultimately results in a deferred or non-prosecution agreement rather than Criminal Conviction and consequent ineligibility under Section I(g). Likewise, intentionally or systematically violating the conditions of the exemption exposes Plans to significant potential harm at the hands of those with influence or control over their assets. In the Department's view, QPAMs and those in a position to influence or control a QPAM's policies that repeatedly engage in these types of serious misconduct do not display the requisite standards of integrity necessary to provide the protection intended for Plans under the exemption.

Through its administration of the individual exemption program, the Department also determined that certain aspects of the QPAM Exemption would benefit from a focus on mitigating potential costs and disruption to Plans when a QPAM becomes ineligible for the exemptive relief because of a conviction under Section I(g). Two major ways in which the amendment would reduce the harmful impact on Plans is by requiring penalty-free withdrawal and indemnification terms to be included in the QPAM's Written Management Agreement with its client Plans and including a one-year winding-down period to avoid unnecessary disruptions to Plans upon a Criminal Conviction or receipt of an Ineligibility Notice due to other Prohibited Misconduct. The winding-down period will help bridge the gap between the QPAM Exemption and the Department's administration of its individual exemption program in connection with Section I(g) ineligibility.

The amendment is also needed to update asset management and equity thresholds to current values in the definition of ''QPAM'' in Section VI(a). Some of the thresholds that establish the requisite independence upon which the QPAM Exemption is based have not been updated since 1984, and the thresholds for registered investment advisers have not been updated since 2005. The amendment will standardize all the thresholds to current values using the Bureau of Labor Statistics Consumer Price Index.

Finally, the QPAM Exemption currently lacks a recordkeeping requirement which the Department generally includes in its administrative exemptions. The amendment would add a recordkeeping requirement to ensure QPAMs will be able to demonstrate, and the Department will be able to verify, compliance with the exemption conditions.

Together, the Department believes these updates are necessary to ensure the QPAM Exemption remains in the interest of and protective of the rights of Plans and their participants and beneficiaries and IRA owners as required by ERISA section 408(a) and Code section 4975(c)(2).

Affected Entities

Qualified Professional Asset Managers (QPAMs)

The following entities generally qualify for the relief set out in the *current* text of the QPAM Exemption:

(1) Banks—as defined in section 202(a)(2) of the Investment Advisers Act of 1940, with equity capital in excess of $1,000,000.

(2) Savings and loan associations—the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, with equity capital or net worth in excess of $1,000,000;

(3) Insurance companies—subject to supervision under state law, with net worth in excess of $1,000,000; and

(4) *Investment advisers*—registered under the Investment Advisers Act of 1940 with total client assets under management in excess of $85,000,000 and either (1) shareholders' or partners' equity in excess of $1,000,000 or (2) payment of liabilities guaranteed by an affiliate, another entity that could qualify as a QPAM, or a broker-dealer with net worth of more than $1,000,000.

Additionally, the entity must acknowledge that it is a fiduciary for each Plan it manages in a written management agreement.

QPAMs that meet the current thresholds, but who otherwise will not meet the new threshold requirements, will also be affected by the amendment, as they would no longer be able to rely on the QPAM Exemption.

The Department estimated there are 616 potential QPAMs by approximating the total number of providers who in 2019 provided services of ''Investment Management'' and ''Named Fiduciary'' simultaneously to at least one plan, as reported in Schedule C of the 2019 Form 5500, and whose NAICS codes start with the 2-digit 52, which corresponds to Finance and Insurance Institutions.[49]

Loss of Ability To Rely on the QPAM Exemption

According to past QPAM Section I(g) individual exemption applicants, the broad exemptive relief in the QPAM Exemption provides client Plans access to one of the Department's most advantageous trading exemptions while ensuring that they are insulated from the influence of bad actors. According to these past applicants, if an entity is no longer able to represent that it is a QPAM, client Plans are far less likely to retain the QPAM as their manager, even in situations where the client technically does not need the relief provided by the exemption. Although a QPAM that fails to satisfy Section I(g) may continue to operate as an asset manager for Plans, the Department understands that some entities use their QPAM status as an indicator of their size and/or sophistication to potential client Plans. Therefore, loss of the ability to rely upon the QPAM Exemption may create perceived or actual costs in the form of lost opportunities for the QPAM.

Additionally, the Department understands that many QPAMs perceive the QPAM Exemption to be one of the simplest exemptions to comply with. Therefore, even if QPAMs believe alternative exemptions are available, they may seek QPAM status as an

[49] Using 2019 Form 5500 data, the Department counted in total 1390 service providers who provided services of ''Investment Management'' and ''Named Fiduciary,'' of which only 765 reported their business code. Out of these 765 providers, 339 reported their business code starting with the 2-digit NAICS code 52, yielding a ratio of 0.44 of potential QPAMs to other providers. Therefore, the Department estimates that there were 0.44*1390=616 potential QPAMs in 2019.

additional protection from the risk, even if limited, of exposure to excise taxes under Code sections 4975(a) and (b) for engaging in non-exempt prohibited transactions as a result of failing the conditions of those exemptions.

Some of the costs and transfers associated with the loss of reliance on the QPAM Exemption are not added costs or transfers imposed by this proposed amendment, but rather costs attributable to the criminal behavior of a QPAM or its affiliate. Additionally, the Department has ultimately granted many applicants individual exemption relief, which has minimized the costs associated with loss of the QPAM Exemption. The Department has quantified or qualitatively discussed costs and transfers that would result from the proposed amendment, below. Many of the benefits that flow through to Plans, their participants and beneficiaries, and IRA owners stem from proposed amendment provisions which impose minimal or no costs but generally benefit them by providing more certainty, protection, and transitional support, such as the provision clarifying that foreign convictions are included in the crimes enumerated in Section I(g), clarification that QPAMs must not permit other parties in interest to make decisions regarding Plan investments under the QPAM's control, and the addition of a mandatory one-year winding-down period.

Plans With Assets in an Investment Fund Managed by a QPAM

The proposed amendment will affect Plans whose assets are held by an Investment Fund that is managed by a QPAM. The Department does not collect data on Plans that use QPAMs to manage their assets. Nevertheless, the Department estimates that a single QPAM services, on average, 32 client Plans.[50] Therefore, the Department estimates that in total there are 19,712 client Plans (616 QPAMs times 32 client Plans per QPAM). The Department requests comment on the number of Plans that may need to find an alternative asset manager or investment fund(s) as a result of the proposed increased thresholds.

Benefits

As noted above, many of the benefits from this proposal to Plans, their participants, beneficiaries, and IRA owners would stem from new and amended conditions that would not significantly increase costs, but would provide more clarity, certainty, protection, and transitional support. In particular, the Department expects that the proposed amendment would provide the specific benefits described below.

Written Management Agreement—Subsection I(g)(2)

The proposed terms for the Written Management Agreement will benefit Plans by providing them with additional certainty that the Plan and its assets will be insulated from losses if a Criminal Conviction or Prohibited Misconduct that results in an Ineligibility Notice occurs. The proposed Written Management Agreement conditions also would benefit client Plans by ensuring they can terminate the arrangement or withdraw from a QPAM-managed Investment Fund without penalty, further ensuring that Plans are not exposed to unnecessary costs when relief under the exemption is lost through no fault of their own. The Department also believes requiring a QPAM to agree to these terms before misconduct occurs establishes a more prominent indication that the QPAM will operate with integrity throughout its dealings with client Plans, which provides additional certainty and assurances to such clients that a Plan's assets will be properly and prudently managed and protected. Similarly, the Department expects these proposed conditions will increase the overall value and attractiveness to Plans of retaining an asset manager that meets the requirements of the QPAM Exemption.

Ineligibility Due to Foreign Criminal Convictions—Subsection I(g)(3)(A) and Subsection VI(r)(2)

The QPAM Exemption was issued, in part, based on the principle that any entity acting as a QPAM—and those who are in a position to influence a QPAM's policies—should maintain a high standard of integrity.[51] This principle is called into question when a QPAM, or an entity that may be in a position to influence its policies, is convicted of certain crimes. The Department sought to address this issue by making entities ineligible for the prohibited transaction relief in the QPAM Exemption as of the date of the trial court judgment for any of the crimes listed in Section I(g).

Since the initial grant of the QPAM Exemption, the Department has granted nine individual exemption requests from QPAM applicants in connection with a foreign conviction; the first being in 2000.[52] The specific reference to foreign-equivalent crimes modernizes the QPAM Exemption to align with the realities of modern investment practices engaged in by many Plans. In this regard, removing all doubt that foreign-equivalent crimes are a basis for ineligibility provides necessary protections for Plans, as required by ERISA section 408(a) and Code section 4975(c)(2). This ultimately provides a benefit to Plans that rely upon QPAMs with strong ties to entities operating in foreign jurisdictions by not depriving them of the protection provided by the proposed amendment to Section I(g).

Ineligibility Due to Participating in Prohibited Misconduct—Subsection I(g)(3)(B) and Section VI(s)

As noted above, the QPAM Exemption is in large part premised on any entity acting as a QPAM, and those who are in a position to influence the QPAM's policies, maintaining a high standard of integrity. To reinforce this standard, the Department proposes to expand the circumstances that lead to ineligibility to avoid unfair and unequal treatment of entities and corporate families that have a record of engaging in malfeasance that ultimately may not result in a Criminal Conviction. Therefore, this extension of the ineligibility provision of current Section I(g) provides a benefit to Plans that rely upon QPAMs that are a part of corporate families with significant compliance failures by not depriving them of the protections provided under the proposed amendment to Section I(g).

Mandatory One-Year Winding-Down Period—Section I(j)

The winding-down period benefits Plans because it is designed to accommodate a Plan's ability to wind-down its relationship with the QPAM, if necessary. The winding-down period ensures that responsible Plan fiduciaries have the time and ability to choose an

[50] Although the Department estimates there are 616 QPAMs, it can only observe and count the number of client Plans corresponding to 339 QPAMs. The Department counted 10,719 Plans served by these 339 observable QPAMs, yielding an average of 32 client Plans per QPAM in 2019. The Department acknowledges that these entities do not necessarily act as QPAMs to their client Plans, and, therefore, considers this average as an upper limit for the number of client Plans served by a QPAM.

[51] Proposed QPAM Exemption, 47 FR at 56947.

[52] *See* Prohibited Transaction Exemption (PTE) 2020–01, 85 FR 8020 (Feb. 12, 2020); PTE 2019–01, 84 FR 6163 (Feb. 26, 2019); PTE 2016–11, 81 FR 75150 (Oct. 28, 2016); PTE 2016–10, 81 FR 75147 (Oct. 28, 2016); PTE 2012–08, 77 FR 19344 (March 30, 2012); PTE 2004–13, 69 FR 54812 (Sept. 10, 2004); and PTE 96–62 (''EXPRO'') Final Authorization Numbers 2003–10E, 2001–02E, and 2000–30E, available at *https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/exemptions/expro-exemptions-under-pte-96-62.*

alternative discretionary asset manager or investment strategy without undue cost to the Plan. Under the current text of Section I(g), the immediate ineligibility of a QPAM upon a judgment of conviction may expose Plans to potential costs and losses without the necessary time to make alternative investment arrangements.

Immediate loss of relief under the QPAM Exemption could place Plans in the difficult position of either: (1) searching for a new asset manager for the services previously provided by the ineligible QPAM; or (2) being forced to liquidate assets at inopportune times, incur transaction costs to sell and repurchase assets, and lose returns while the assets are in transition. Searching for a new asset manager could require a particularly resource- and time-intensive process for Plan fiduciaries.

The proposed amendment benefits Plans by providing Plan fiduciaries with time and flexibility to determine the best path forward. This includes the benefit of ensuring Plans can mitigate any potential for disruption and losses by implicating the terms required in the Written Management Agreement under proposed subsection I(g)(2). If Plan fiduciaries decide to retain an ineligible QPAM as a discretionary asset manager, the one-year winding-down period will give the Plan fiduciaries time to determine and prepare for any changes that may be necessary for Plan investments.

Finally, the winding-down period benefits QPAMs by providing additional time for them to request an individual exemption from the Department. This will allow QPAMs, consistent with their applicable fiduciary obligations, to communicate with and assist their client Plans in determining an appropriate path forward for the management of Plan assets.

Requesting an Individual Exemption—Section I(k)

In addition to providing more certainty to QPAMs and Plans, the proposed amendment would also require QPAMs that seek individual exemption relief to review the Department's most recently granted individual exemptions with the expectation that similar conditions will be required if an exemption is proposed and granted. If an applicant requests the Department to exclude any term or condition from its exemption that is included in a recently issued similar individual exemption, the applicant must accompany such request with a detailed explanation of the reason such change is necessary, in the interest of, and protective of the Plan, its participants and beneficiaries, and IRA owners. Applicants also should provide detailed information in their applications quantifying the specific cost in dollar amounts, if any, of the harms Plans would suffer if a QPAM could not rely on the exemption after the winding-down period.

The Department generally requests such information from an applicant if it is not included in its application. Therefore, the Department believes that the benefit of this provision will be reduced costs due to a more streamlined exemption application process because clearer standards for how an applicant should formulate its application would be established. The Department requests comment on this assumption.

Involvement in Investment Decisions by Parties in Interest—Section I(c)

The proposed modification to the language in Section I(c) will benefit Plans, their participants and beneficiaries, and IRA owners by ensuring that the Plan is not engaging in harmful prohibited transactions that are orchestrated by parties in interest. The Department understands that some Plan fiduciaries, in conjunction with hiring a QPAM, may be engaging in abuses of the exemption. The amendatory language should help ensure that Plans, their participants and beneficiaries, and IRA owners are not exposed to conflicts of interest that the QPAM Exemption was not designed to address and for which the Department should not provide prohibited transaction relief.

Asset Management and Equity Thresholds—Section VI(a)

The Department expects that the benefit associated with the proposed updates to the asset management and equity thresholds is the preservation of the underlying intent of the size conditions, which is to ensure the use of an asset manager that is sufficiently large to be able to withstand improper influence from parties in interest (*i.e.,* maintain independence).

Costs

All QPAMs must acknowledge that they are fiduciaries within the meaning of Title I of ERISA and/or the Code with respect to each Plan that has retained the QPAM. In analyzing compliance costs associated with the amendment, the Department considers the regulatory baseline that QPAMs already are required to comply with—primarily ERISA's fiduciary duty requirements (to the extent applicable), the other existing conditions in the QPAM Exemption, and the individual exemption process as well as related individual exemptions granted in connection with Section I(g) ineligibility. The Department does not expect the amendment to increase, more than marginally, existing costs associated with QPAM ineligibility and individual exemption requests related to Criminal Convictions. The Department is uncertain, however, regarding the number of QPAMs that would become ineligible under the proposed expansion of the ineligibility provision related to participating in Prohibited Misconduct. The Department is also uncertain about the extent to which the proposed changes in asset management and equity thresholds would give rise to new costs because some QPAMs that meet the current thresholds no longer would be able to rely on the exemption if they do not meet the proposed increased thresholds.

The following analysis considers the impact on all QPAMs, except that the analysis of the cost of the winding-down provision is only considered for ineligible QPAMs. Although the Department has provided a cost analysis below, the heightened standards proposed in this amendment may result in entities being more careful about ensuring that their compliance programs are sufficiently robust to prevent Prohibited Misconduct or Convictions from occurring. In this respect, the proposed exemption would provide clear guardrails that would make the costs associated with QPAMs becoming ineligible clearly avoidable.

Reporting Reliance on the QPAM Exemption—Subsection I(g)(1)

The Department believes that the one-time requirement to report reliance on the QPAM Exemption via email to *QPAM@dol.gov* will result in a minor additional clerical cost. The information required under subsection I(g)(1) is limited to the legal name of the entity relying upon the exemption and any name the QPAM may be operating under.

This notification would occur only once for most QPAMs. Therefore, the Department expects it will take 15 minutes, on average, for each QPAM to prepare and send this electronic notification. This cost is estimated to be $8,505.[53] The Department seeks comment on this estimate.

[53] The cost is based upon the expenditure of 0.25 hours for each QPAM: (616 QPAMs * 0.25 hours = 154 hours in total). To calculate the cost, an hourly labor rate of $55.23 is used for a clerical worker. Therefore, the total cost amounts to: (616 QPAMs * 0.25 hours * $55.23) = $8,505 (rounded). The Department estimates of labor costs by occupation reflect estimates of total compensation

Continued

Written Management Agreement—Subsection I(g)(2)

The Department believes that the cost associated with adding the required terms under subsection I(g)(2) to a QPAM's Written Management Agreement only would impose costs related to updating existing management agreements. QPAMs will need to send the update to each of their client Plans, but the QPAM likely would be able to prepare a single standard form with identical language and then send it to each client Plan. For each QPAM, the Department estimates it will take one hour of in-house legal professional time to update and supplement their existent standard management agreements, and two minutes of clerical time to prepare and mail a one-page addition to the agreement to each client Plan. Including mailing costs, the total estimated cost of this requirement amounts to $135,540.[54]

Ineligibility Due to Foreign Convictions—Subsection I(g)(3)(A) and Subsection VI(r)(2)

The Department and QPAMs have treated foreign convictions as causing ineligibility under Section I(g) since at least 2000.[55] Therefore, the Department believes that the clarifying reference that includes foreign convictions within the scope of Section I(g) will not change the costs of the exemption as compared to the current costs.

Mandatory One-Year Winding-Down Period—Section I(j)

To estimate the number of future ineligible QPAMs, the Department first referred to individual exemptions the Department granted to QPAMs facing ineligibility under current Section I(g) in connection with 14 separate convictions or possible convictions since 2013.[56] The Department believes the individual exemptions granted since 2013 provide the best basis for estimating the number of future ineligible QPAMs. The Department lacks data regarding the actual number of QPAMs covered by each individual exemption before 2013; therefore, the exemptions issued since 2013 best reflect the current legal and prosecutorial environment that ultimately leads to convictions covered by current Section I(g). Each individual exemption may affect multiple QPAMs, so the Department considers the number of affected entities to be the number of QPAMs covered by each individual exemption. The Department then estimated the number of QPAMs that might be captured by the proposed expansion of the ineligibility provision that applies to participating in Prohibited Misconduct.

As shown in the table below, the Department estimates that eight QPAMs each year would be subject to the one-year winding-down period after a Criminal Conviction.[57] The number of QPAMs affected in any given year is a function of the number of convictions covered by Section I(g) and the number of entities within a corporate family operating as QPAMs. Therefore, in some years, the number of affected QPAMs impacted by ineligibility due to a Criminal Conviction could be higher than eight, and in other years it could be lower. These calculations are broken down in the table below.

TABLE 1—SUMMARY OF PAST CONVICTIONS THAT WOULD IMPLICATE THE PROPOSED WINDING-DOWN PERIOD

[By year]*

	Number of convictions	Number of affected QPAMs
2013	1	4
2014	1	3
2015	1	20
2016	6	25
2017	.....	.....
2018	.....	.....
2019	.....	.....
2020	.....	.....
2021	1	13
Total	10	65

and overhead costs. Estimates for total compensation are based on mean hourly wages by occupation from the 2020 Occupational Employment Statistics and estimates of wages and salaries as a percentage of total compensation by occupation from the 2020 National Compensation Survey's Employee Cost for Employee Compensation. Estimates for overhead costs for services are imputed from the 2017 Service Annual Survey. To estimate overhead cost on an occupational basis, the Office of Research and Analysis allocates total industry overhead cost to unique occupations using a matrix of detailed occupational employment for each NAICS industry. All values are presented in 2020 dollars.

[54] This cost is based upon the expenditure of one hour of a legal professional for each of the 616 estimated QPAMs using an hourly labor rate of $140.96. This labor cost is estimated as (616 QPAMs * 1 hour * $140.96) = $86,831 for legal professional time (rounded). As specified in the PRA section, the Department estimates each QPAM serves 32 client Plans on average. The Department also expects each QPAM will have to append one page to their existing management agreements and that it will take each QPAM two minutes of clerical time to prepare and mail this one-page addition to each client Plan. This labor cost is then estimated as (616 QPAMs * 32 client Plans * (2/60) hours * $55.23) = $36,290 for clerical time (rounded). The Department estimates that the costs of printing and mailing one page are $0.05 and $0.58, respectively. Therefore, adding one page to all management agreements amounts the total printing and mailing cost to (616 QPAMs * 32 client Plans) * 1 page * ($0.05 + $0.58) = $12,419 (rounded). The estimated total cost of the provision is therefore $86,831 + $36,290 + $12,419 = $135,540.

[55] *See, e.g.,* Prohibited Transaction Exemption (PTE) 2020–01, 85 FR 8020 (Feb. 12, 2020); PTE 2019–01, 84 FR 6163 (Feb. 26, 2019); PTE 2016–11, 81 FR 75150 (Oct. 28, 2016); PTE 2016–10, 81 FR 75147 (Oct. 28, 2016); PTE 2012–08, 77 FR 19344 (March 30, 2012); PTE 2004–13, 69 FR 54812 (Sept. 10, 2004); and PTE 96–62 (''EXPRO'') Final Authorization Numbers 2003–10E, 2001–02E, and 2000–30E, available at *https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/exemptions/expro-exemptions-under-pte-96-62.*

[56] Ineligible QPAMs that request individual exemptions generally request relief for the entire ten-year ineligibility period. However, to engage in thorough fact-finding process and to verify compliance with certain audit provisions in the individual exemptions, the Department has granted exemptions that include less than ten years of relief in many situations. Ineligible QPAMs then typically apply for an extension of relief even though no additional conviction has occurred. Additionally, in situations where an ineligible QPAM is impacted by a subsequent conviction before the expiration of the ten-year ineligibility period for the initial conviction, the winding-down period would also not be implicated, so there is no additional cost burden associated with subsequent convictions. The Department notes that there were a total of three subsequent convictions after an initial conviction for some entities in 2017, 2018, and 2019.

[57] The Department did not include in this estimate any of the possible QPAMs that have remote relationships with a convicted entity, identified in the individual exemptions as ''Related QPAMs.'' The Department has never received comments, questions, requests for guidance, or separate individual exemption applications from any entities that would fall into that definition, and therefore, assumes such entities are not operating as QPAMs. The Department welcomes input on this assumption.

TABLE 1—SUMMARY OF PAST CONVICTIONS THAT WOULD IMPLICATE THE PROPOSED WINDING-DOWN PERIOD—Continued

[By year] *

	Number of convictions	Number of affected QPAMs
Average	1.1	7.2
Estimated Yearly Average ** (rounded)	2	8

* The average number of affected QPAMs includes zeros for years without convictions that would implicate the winding-down period. There were three convictions during the period from 2017 through 2020 that would not implicate the winding-down period and associated costs.

** The corresponding calculated averages include decimals; therefore, to err on the side of caution and inclusion the estimated yearly average is rounded to the upper integer.

The Department's proposed expansion of the ineligibility provision to include Prohibited Misconduct that leads to an Ineligibility Notice likely will increase the number of QPAMs that become ineligible due to Section I(g). Although the Department does not have precise data to determine the exact number of QPAMs that would become ineligible due to this proposed expansion, the Department has assumed the additional number of ineligible QPAMs to be equal to the eight QPAMs that experience ineligibility due to a conviction under current Section I(g), resulting in a total of 16 ineligible QPAMs. The Department requests comments on this assumption and data or other information that would allow the Department to more precisely estimate the number of QPAMs that would lose eligibility due to this proposed expansion.

Because the conditions of the winding-down provision borrow from the conditions included in the Department's existing individual Section I(g) exemptions, the Department does not believe there will be any added cost with respect to the proposed winding-down period for QPAMs that become ineligible due to a Criminal Conviction relative to the current baseline of obtaining an individual exemption covering this same time period. However, an additional eight QPAMs, on average, may become ineligible each year for participating in Prohibited Misconduct, implicating the winding-down period and the conditions related to proposed provisions that are required to be included in the Written Management Agreement. As a result, QPAMs would have to possibly bear the costs associated with indemnifying their client Plans for losses that would occur if they move to a new asset manager. The Department lacks sufficient data at this time to estimate these costs associated with the winding-down period and requests comments regarding these costs. The Department welcomes comments that would provide data to assist in calculating an estimate.

Notice to Plans—Subsection I(j)(1)

Within 30 days after the conviction date, the QPAM must provide notice to the Department at *QPAM@dol.gov* and each of its client Plans stating (i) its failure to satisfy subsection I(g)(3); and (ii) that it agrees, as required by subsection I(g)(2), not to restrict the ability of a client Plan to terminate or withdraw from its arrangement with the QPAM. QPAMs that violate Section I(g) under the current QPAM Exemption are required to provide this type of notice when they obtain an individual exemption, so no incremental burden is attributed to this requirement for QPAMs that become ineligible due to a Criminal Conviction. However due to the expanded proposed scope of ineligibility, QPAMs that become ineligible after receiving an Ineligibility Notice due to participating in Prohibited Misconduct will incur the cost of sending notices to their client Plans for the first time. With an average of 32 client Plans per QPAM, the Department estimates that, in total, four hours of in-house legal professional time will be required to prepare all notices as well as seven hours of clerical time for distribution. Including mailing costs, the Department estimates that the total incremental cost related to ineligibility after receiving an Ineligibility Notice is $1,090.[58]

The Department believes the cost of sending this notice to the Department will be negligible because the QPAM will have already prepared and sent the notice to client Plans and the notice to the Department is required to be sent electronically.

Warning and Opportunity To Be Heard in Connection With Prohibited Misconduct—Section I(i)

As described above, the Department estimates eight QPAMs could experience ineligibility due to participating in Prohibited Misconduct. Before QPAMs become ineligible, they would be provided with a written warning and an opportunity to be heard under Section I(i). As a result, QPAMs would have to possibly bear the costs associated with this process. The Department estimates that this process would occur twice each year, with each process covering four QPAMs that are part of the same corporate family. The Department estimates that preparing a response to the ineligibility notice and for a conference with the Department would require 10 in-house legal professional hours (two preparations * 10 hours) resulting in 20 total hours at an equivalent cost of approximately $2,819.[59] The Department estimates that preparing a response and preparing for the conference will also require 16 total outside legal professional hours (2 preparations times 8 hours) at a cost of $7,904.[60] Thus, the total labor cost of preparing a response and preparing for a conference amounts to $10,723. The Department requests comment on this cost estimate.

[58] The burden is estimated assuming 8 QPAMs will need to send the notice: 8 QPAMs * 0.5 hours of professional legal time = 4 hours to prepare all notices. The Department also assumes that 80 percent of all notices will be delivered by regular mail, requiring approximately two minutes of clerical time to prepare the notices for mailing, that is, (8 QPAMs * 32 Plans * 0.80 sent by paper) * (2/60) hours of clerical time = 7 hours (rounded). The Department also estimates that the cost burden for preparing and mailing the notices will be approximately equal to $139, that is, 205 * ((2 * $0.05) + $0.58) = $139 (rounded). Therefore, the total cost associated with this requirement is (4 * legal professional labor rate of $140.96) + (7 * clerical labor rate of $55.23) + $139 = $1,090 (rounded). Any discrepancies in the calculations are a result of rounding.

[59] This cost is based upon an hourly labor rate of $140.96 for an in-house legal professional. 2020 National Compensation Survey's Employee Cost for Employee Compensation.

[60] The outside legal professional labor rate is a composite weighted average of the Laffey Matrix for Wage Rates (*http://www.laffeymatrix.com/see.html,* Year: 6/01/21–5/31/22): ($381 * 0.4) + ($468 * 0.35) + ($676 * 0.15) + ($764 * 0.1) = $494.

Requesting an Individual Exemption—Section I(k)

Proposed new Section I(k) provides that a QPAM that is ineligible or anticipates that it will become ineligible due to an actual or possible Criminal Conviction may apply for an individual exemption from the Department to continue to rely on the relief provided in the QPAM Exemption for a longer period than the one-year winding-down period. In such an event, the exemption provides that an applicant should review the Department's most recently granted individual exemptions involving Section I(g) ineligibility. If an applicant requests the Department to exclude any term or condition from its exemption that is included in a recently granted individual exemption, the applicant must include a detailed statement with its exemption application explaining the reason(s) why the proposed variation is necessary and in the interest and protective of affected Plans, their participants and beneficiaries, and IRA owners. Such applicants also should provide detailed information in their applications quantifying the specific cost in dollar amounts, if any, of any harm its client Plans would suffer if a QPAM could not rely on the exemption after the winding-down period, including the specific dollar amounts of investment losses resulting from foregone investment opportunities and any evidence supporting the proposition that investment opportunities would only be available to Plans on less advantageous terms.

Due to the proposed expanded scope of ineligibility to include participating in Prohibited Misconduct, the Department estimates that two additional applicants each year would apply for an individual exemption, each covering four ineligible QPAMs. Each of these two new applicants will spend 12 hours of in-house legal professional and 13 hours of in-house clerical time preparing the required documentation for the application that will be used by an outside legal professional. The Department estimates that total labor costs (wages plus benefits plus overhead) for an in-house legal professional would average $140.96 per hour and $55.23 per hour for clerical staff.[61] Therefore, the Department estimates that preparing this documentation would require 24 in-house legal professional hours (2 applications * 12 hours) and 26 clerical hours (2 applications * 13 hours) resulting in 50 total hours at an equivalent cost of approximately $4,819.[62] Further, the Department estimates that, on average, 25 hours of outside legal professional time will be spent preparing the documentation for the application, with a total labor cost for outside legal professionals estimated to average $494.00 per hour.[63] The Department estimates that preparing the applications will also require 50 total outside legal professional hours (2 applications * 25 hours) at a cost of $24,700. Thus, the total labor cost of application preparation amounts to $29,519.

For applications that reach the stage of publication of a proposed exemption in the **Federal Register**, a notice must be prepared and distributed to interested parties. If both applications are published annually, approximately 256 notices will be distributed (this corresponds to 32 client Plans per each of the eight QPAMs affected by two applications). Similarly, if the proposed exemptions are ultimately granted, each of these eight QPAMs will be required to send an objective description of the facts and circumstances upon which the misconduct is based to each client Plan. The Department estimates that the distribution for notices and objective descriptions will require 10 minutes for each one of the 256 interested parties, totaling approximately 42 hours at a cost of approximately $2,357.[64] In addition, material and mailing costs for all of these notices totals approximately $443.[65] Therefore, the Department estimates that the total costs associated with notice distribution would be $2,800.

Additional Requirement for QPAMs Requesting an Individual Exemption

If an applicant requests the Department to exclude any term or condition from its exemption that is included in a recently granted individual exemption, the applicant must include a detailed statement with its exemption application explaining the reason(s) why the proposed variation is necessary and in the interest and protective of affected Plans, their participants and beneficiaries, and IRA owners. In these applications, detailed information would be required quantifying the specific cost to Plans, in dollar amounts, of the harm its client Plans would suffer if a QPAM could not rely on the exemption after the winding-down period. This should include dollar amounts of investment losses resulting from foregone investment opportunities and any evidence supporting the proposition that investment opportunities would only be available to Plans on less advantageous terms.

The Department assumes the eight QPAMs that are estimated to become ineligible due to the receipt of a written Ineligibility Notice would incur incremental costs due to the cost quantification requirement described above and also the requirement to review the Department's most recently granted individual exemptions involving Section I(g) ineligibility. To satisfy the requirement to review the Department's most recently granted individual exemptions, the Department estimates that it would require three hours of outside legal professional time to review past individual exemptions and draft this addition to the individual exemption application. Therefore, for the two applications covering the eight ineligible QPAMs receiving a written Ineligibility Notice, the cost associated with the additional requirement totals $4,288.[66]

The eight QPAMs that would become ineligible due to a Criminal Conviction will only incur an incremental cost to ensure they include in their exemption applications the specific dollar amounts

[61] *See supra,* notes 53 and 59. 2020 National Compensation Survey's Employee Cost for Employee Compensation.

[62] The 24 in-house legal professional hours are estimated to cost $3,383 (rounded), and the 26 in-house clerical hours are estimated to cost $1,436 (rounded). This totals to $4,819 (rounded). Any discrepancies in the calculations are a result of rounding.

[63] *See supra,* note 60.

[64] The total cost is calculated as: ((10/60) hours * 256 interested parties * $55.23 hourly clerical rate) = $2,357 (rounded).

[65] The Department estimates that 80% of these notices, that is, 205 notices, will be delivered by regular mail. The Department further assumes that notices and the descriptions of facts and circumstances will be delivered separately, comprising 15 and 5 pages, respectively. Therefore, with a printing cost of $0.05 per page and a mailing cost of $0.58 per notice, the Department estimates the total mailing cost as 205 * ((15 * $0.05) + $0.58) + 205 * ((5 * $0.05) + $0.58) = $443 (rounded).

[66] The burden is estimated assuming 8 QPAMs experience ineligibility that will need to include this information in their individual exemption application. Because the average number of QPAMs covered by a single exemption is four, the cost estimation is made assuming 2 applications. At an hourly rate of $165.45 for financial professional time, the cost associated with the cost quantification requirement is estimated as: (2 applications * 4 hours * $165.45 financial professional rate) = $1,324 (rounded). For the cost associated with the review of past exemptions, a composite wage rate is used for the outside legal professional by employing a weighted average of the legal fees reported in the Laffey Matrix for Wage Rates (*http://www.laffeymatrix.com/see.html,* Year: 6/01/21–5/31/22): ($381 * 0.4) + ($468 * 0.35) + ($676 * 0.15) + ($764 * 0.1) = $494. The total cost associated with reviewing past exemptions is then (2 applications * 3 hours * $494 outside legal professional rate) = $2,964 (rounded). Therefore, the total cost associated with the additional requirement for QPAMs ineligible due to receiving a written Ineligibility Notice is ($1,324 + $2,964) = $4,288 (rounded).

of investment losses resulting from foregone investment opportunities and any evidence supporting the proposition that investment opportunities would only be available to client Plans on less advantageous terms. For this requirement, the Department assumes it would require four hours of a financial professional time to prepare such a report. Therefore, for the two applications covering the eight ineligible QPAMs due to a Criminal Conviction, the cost associated with the additional requirement totals $1,324.[67]

Involvement in Investment Decisions by Parties in Interest—Section I(c)

The Department anticipates that the modifications to Section I(c) will not change the costs of the exemption as compared to cost of the current QPAM Exemption because the types of transactions that were intended to be excluded by current Section I(c) are the same types of transactions intended to be excluded by modified Section I(c).

Asset Management and Equity Thresholds—Section VI(a)

As a result of the proposed adjustments to the asset management and equity thresholds to the QPAM definition in Section VI(a), the Department acknowledges some QPAMs may not meet the new threshold requirements, and, consequently, would no longer be able to rely on the QPAM Exemption. The Department expects QPAMs and Plans that utilize these QPAMs to incur costs due to this transition but lacks strong data to estimate the impact.[68] The Department has requested similar data in connection with individual applications for exemptions following convictions covered by Section I(g), but the data provided by applicants has been limited, as have been the costs identified by the applicants. The Department seeks comments and data on the number of QPAMs who will potentially become unable to rely upon the exemption (along with the number of Plans and value of Plan assets) that will be impacted by the increase in asset management and equity thresholds.

Recordkeeping—Section VI(t)

The amendment would also add a new recordkeeping provision that would apply to all QPAMs. Due to the fiduciary status of QPAMs and the existing regulatory environment, the Department assumes that QPAMs already maintain such records as part of their regular business practices. In addition, the recordkeeping requirements correspond to the six-year period in ERISA sections 107 and 413. Therefore, the Department expects that the recordkeeping requirement would impose a negligible burden. The Department welcomes comments regarding the burden associated with the recordkeeping requirement.

If a QPAM refuses to disclose information to any of the parties listed in Section VI(t), on the basis that information is exempt from disclosure, the QPAM must provide a written notice advising the requestor of the reason for the refusal and that the Department may request such information. The Department does not have data on how often such a refusal is likely to occur; however, the Department believes such instances would be rare. As a result, the Department believes this requirement would impose negligible cost and requests comments about whether this may happen more frequently and the possible costs.

Rule Familiarization Costs

The Department estimates that it will take 60 minutes, on average, for each QPAM to become familiar with the proposed amendment. The familiarization cost is estimated to be $304,304.[69] The Department seeks comment on this estimate.

Summary of Costs

The total estimated annual costs associated with the proposal will be $487,370 in the first year and $183,066 in subsequent years. Table 2 summarizes the costs for each requirement.

TABLE 2—COST SUMMARY

Requirement	Aggregate cost change (in dollars)
Reporting Reliance on the QPAM Exemption	$8,505
Written Management Agreement	135,540
Notice to Plans	1,090
Written Warning and Opportunity to be Heard	10,723
Requesting an Individual Exemption Costs:	
Preparation Labor Cost	29,519
Notices Distribution	2,800
Additional Requirement-Criminal Conviction QPAMs	1,324
Additional Requirement-Prohibited Misconduct QPAMs	4,288
Rule Familiarization Costs	304,304
First Year Total Estimated Annual Cost	498,093
Subsequent Years Total Estimated Annual Cost [1]	193,789

Note: Only quantifiable costs are displayed.
[1] Excludes Rule Familiarization Costs.

[67] The burden is estimated assuming 8 QPAMs experience ineligibility that will need to include this information in their individual exemption application. Because the average number of QPAMs covered by a single exemption is four, the cost estimation is made assuming 2 applications. At an hourly rate of $165.45 for financial professional time, this cost is estimated as: (2 applications * 4 hours * $165.45 financial professional rate) = $1,324 (rounded).

[68] Some QPAMs have suggested in the past that there could be costs associated with unwinding transactions that relied on the QPAM Exemption and reinvesting assets in other ways. The loss of QPAM status could also require an asset manager to keep lists of parties in interest to its client Plans to ensure the asset manager does not engage in prohibited transactions. However, even without the QPAM Exemption, a wide variety of investments are available that do not involve non-exempt prohibited transactions.

[69] The cost is based upon the expenditure of 1.0 hours for each of the 616 estimated QPAMs to become familiar with the proposed amendments: (616 QPAMs * 1 hour = 616 hours in total). To calculate the cost a composite wage rate is used by employing a weighted average of the legal fees reported in the Laffey Matrix for Wage Rates (*http://www.laffeymatrix.com/see.html,* Year: 6/01/21–5/31/22): ($381 * 0.4) + ($468 * 0.35) + ($676 * 0.15) + ($764 * 0.1) = $494. This amounts to: (616 QPAMs * 1 hour * $494) = $304,304. Note that QPAMs likely rely on outside specialized legal counsel to help keep them in compliance with the QPAM Exemption. The specialized outside legal counsel likely will review the amendment and present updates to their clients, which means that the costs will be spread out over multiple clients.

Transfers

If an asset manager becomes ineligible for relief under the QPAM Exemption (*e.g.,* because of its participation in Prohibited Misconduct), its client Plans may choose to transfer assets and revenue away from the ineligible asset manager to its competitors. From the Plan's perspective, the reduction in assets entrusted to the original asset manager (and associated revenue reduction) are offset by the increase in assets managed by another asset manager or managers (and associated revenue increase). Even if the impact of the switch is minimal or neutral from the point of view of the Plan, it is nevertheless appropriately characterized as a transfer from a societal perspective.[70]

Although the Department does not have sufficient data to quantify the likely size of such revenue transfers, they could have an annual effect that exceeds $100 million due to the significant pool of Plan assets that QPAMs manage. To the extent the proposed amendment results in the movement of assets from asset managers that become ineligible to rely on the exemption because of their Prohibited Misconduct to asset managers that have not engaged in such misconduct, the associated revenue transfers promote the Department's objectives in proposing this amendment to the QPAM Exemption and enhance the security of Plan investments.

The Department seeks comments on transfers that could result from the proposed expansion of the QPAM Exemption's ineligibility provision. The Department is particularly interested in receiving comments addressing whether a QPAM's client Plans would be likely to move all or some their assets to an alternative asset manager after a QPAM becomes ineligible due to the proposed expansion of the ineligibility provision. The Department also specifically requests comments on the likely size of the transaction costs associated with searching for and hiring new asset managers.

Regulatory Alternatives

In order to make the statutory findings for issuing exemptions dictated by ERISA section 408(a) and Code section 4975(c)(2), the Department must find that an exemption is in the interest of and protective of the rights of Plans, their participants and beneficiaries, and IRA owners. Therefore, the Department provides several qualitative alternatives to the proposed amendment, as discussed below, that were considered in connection with the statutorily mandated exemption requirements.

Do not amend the QPAM Exemption—Continue status quo of addressing ineligibility under current Section I(g) and only through administration of the individual exemption program.

The Department considered not expanding the scope of Section I(g) and maintaining its practice of addressing ineligibility under Section I(g) only through the individual exemption process. However, immediate ineligibility under Section I(g) has become a source of uncertainty and potential disruption to Plans. As the financial services industry has become increasingly consolidated, the number of entities becoming ineligible for relief under the QPAM Exemption has grown, prompting more entities to face ineligibility. Through the individual exemption process, client Plans would continue to be exposed to the potential for immediate disruption and transition costs that might otherwise be avoided through this proposed amendment.

The Department decided against this alternative in favor of this proposed amendment, relying on its experience processing individual exemption applications to create a smoother transition between the QPAM Exemption and the individual exemption program so that a QPAM's client Plans have certainty regarding their rights after an ineligibility event occurs.

Amend the QPAM Exemption to expressly exclude foreign convictions.

The Department considered expressly limiting the scope of convictions to only those in a U.S. federal or state trial courts. However, given the increasingly global reach of asset managers and investment strategies, the Department determined such a limitation would leave Plans less protected and be inconsistent with the ERISA section 408(a) and Code section 4975(c)(2) required findings. An affiliated entity's criminal or other misconduct in a foreign jurisdiction is an important indicator of the integrity of the entire corporate organization and casts doubt on a QPAM's ability to act in a manner that will properly protect Plans and their participants and beneficiaries from the related damages, losses, and other harm that often result from such criminal or other misconduct.

Amend the QPAM Exemption to remove asset management and equity thresholds.

As an alternative to updating the asset management and equity thresholds, the Department revisited whether such thresholds could be removed entirely from the exemption. The Department determined that this approach would be inconsistent with one of the core concepts upon which the QPAM Exemption was based. In the absence of an appropriate alternative ensuring that a QPAM will remain an independent decision-maker, free from influence of other Plan fiduciaries, the Department is unable to justify the removal of the thresholds.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to allow the general public and federal agencies to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA).[71] This helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Currently, the Department is soliciting comments concerning the proposed information collection request (ICR) included in the proposed QPAM Exemption amendment. To obtain a copy of the ICR, contact the PRA addressee shown below or go to *https://www.reginfo.gov/public/.*

The Department has submitted a copy of the proposed amendment to the Office of Management and Budget (OMB), in accordance with 44 U.S.C. 3507(d), for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

[70] Although a QPAM's client Plans could be expected to move some or all of its assets to another asset manager if the QPAM is convicted of an enumerated crime, this discussion does not address these transfers. The Department has long viewed both domestic and foreign convictions as causing ineligibility under the existing exemption. Consequently, the regulatory baseline already includes the impact of such convictions.

[71] 44 U.S.C. 3506(c)(2)(A) (1995).

• Enhance the quality, utility, and clarity of the information to be collected; and

• Help 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 electronically delivered responses).

Commenters may send their views on the Department's PRA analysis in the same way they send comments in response to the NPRM as a whole (*e.g.,* through the *www.regulations.gov* website), including as part of a comment responding to the broader NPRM. In addition to having an opportunity to file comments with the Department, comments about the paperwork implications of the proposed regulation may also be addressed to the OMB. Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503 and marked ''Attention: Desk Officer for the Employee Benefits Security Administration.'' OMB requests that comments be received by September 26, 2022, which is 60 days from publication of the proposed amendment to ensure their consideration.

PRA Addressee: Address requests for copies of the ICR to James Butikofer, Office of Research and Analysis, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210 or by email at: *ebsa.opr@dol.gov.* ICRs also are available at *https://www.reginfo.gov* (*https://www.reginfo.gov/public/do/PRAMain*).

Prohibited Transaction Exemption 84–14, 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985) and amended at 70 FR 49305 (August 23, 2005) and at 75 FR 38837 (July 6, 2010) (the QPAM Exemption) permits various parties related to Plans to engage in transactions involving Plan assets if, among other conditions, the assets are managed by a QPAM.

The following analysis considers the existing paperwork burden associated with the existing QPAM Exemption. The Department estimates that there were 616 QPAMs in 2019.[72]

Paperwork Burden Associated With the QPAM Exemption Information Collection Requirements

Using 2019 Form 5500 data, the Department estimated there are 616 potential QPAMs by approximating the total number of providers who in 2019 provided services of ''Investment Management'' and ''Named Fiduciary'' simultaneously to at least one plan, as reported on Schedule C of the 2019 Form 5500, and whose NAICS codes start with the 2-digit 52, which corresponds to Finance and Insurance Institutions.[73] Furthermore, using the same data, the Department estimates that a single QPAM services, on average, 32 client Plans.[74] Therefore, the Department estimates that in total there are 19,712 client Plans (616 QPAMs times 32 client Plans per QPAM).

QPAM-Sponsored Plans—Policies and Procedures—Section V(b)

The existing information collection requirements of the QPAM Exemption require in-house QPAMs to develop written policies and procedures designed to ensure compliance with the conditions of the exemption. Existing in-house QPAMs will have already prepared their policies and procedures in accordance with the QPAM Exemption, however some in-house QPAMs may also update their policies and procedures in a given year. The Department estimates that the burden associated with preparing policies and procedures will affect ten percent of all in-house QPAMs, including all new in-house QPAMs and some existing in-house QPAMs.

The latest Form 5500 estimates from the year 2019 indicate that there are approximately 118 in-house QPAMs.[75] Therefore, the Department estimates that about 12 QPAMs will need to update their policies and procedures each year.[76] The Department estimates that the costs associated with new QPAMs meeting the policies and procedures requirements of the QPAM Exemption is $1,663.[77]

QPAM-Sponsored Plans—Independent Audit—Section V(c)

Additionally, the exemption requires in-house QPAMs to engage an independent auditor to conduct an annual exemption audit and issue an audit report to the Plan. The Department estimates that each of the 118 in-house QPAMs will use in-house legal professionals, financial managers, and clerical time to provide documents and respond to questions from the auditor. The Department assumes QPAMs use either a law firm or a consulting firm to conduct the exemption audits, and the Department assumes that the average cost of an exemption audit is $25,000.[78] This results in a total estimated cost of $2,950,000.[79] Additionally, each exemption audit is assumed to require about five hours of a legal professional's time, 13 hours of a financial manager's time, and six hours of clerical time for each of the 118 QPAMs to provide needed materials for the audit. This amounts to an approximate cost of $3,187 per in-house QPAM, therefore resulting in a total equivalent cost of $376,070.[80] The Department requests comment on the cost and time estimates to conduct the audits.

[72] Using Form 5500 data for 2019, the Department counted in total 1390 service providers who provided services of ''Investment Management'' and ''Named Fiduciary,'' of which only 765 reported their business code. Out of these 765 providers, 339 reported their business code starting with the 2-digit NAICS code 52, yielding a ratio of 0.44 of potential QPAMs to other providers. Therefore, the Department estimates that there were 0.44 * 1390 = 616 potential QPAMs in 2019.

[73] The Department counted in total 1390 service providers who provided services of ''Investment Management'' and ''Named Fiduciary,'' of which only 765 reported their business code. Out of these 765 providers, 339 reported their business code starting with the 2-digit NAICS code 52, yielding a ratio of 0.44 of potential QPAMs to other providers. Therefore, the Department estimates that there were potentially 0.44 * 1390 = 616 QPAMs in 2019.

[74] Although the Department estimates there are 616 QPAMs, it can only observe and count the number of client Plans corresponding to 339 QPAMs. The Department counted 10,719 Plans served by these 339 observable QPAMs, yielding an average of 32 client Plans per QPAM in 2019. The Department acknowledges that these entities do not necessarily act as QPAMs to their served client Plans, and therefore considers this average as an upper limit for the number of client Plans served by a QPAM.

[75] The Department estimated the number of in-house QPAMs in 2019 using the estimated fraction of QPAMs who also sponsored a Plan in 2019.

[76] 0.1 * 118 QPAMs = 12 QPAMs (rounded). Any discrepancies may occur from rounding figures in this summary but not in the actual calculations.

[77] The burden is estimated as follows: (0.1 * 118 * 1 hour) = 12 hours (rounded). A labor rate of $140.96 is used for legal counsel and applied in the following calculation: (0.1 * 118 * 1 hour * $140.96) = $1,663 (rounded).

[78] The Department has received information from industry representatives that the cost of a similar annual audit required by PTE 96–23 (the INHAM Exemption) may range from approximately $10,000 to $25,000, depending on asset size and how many years the INHAM has used the auditing firm. Because of the type of audit required for an in-house QPAM, the Department has assumed that the average cost of an exemption audit required by the QPAM Exemption would be $25,000.

[79] Assuming that the average cost of an exemption audit would be $25,000, 118 QPAMs * $25,000 = $2,950,000.

[80] The burden is estimated as follows: (118 * 5 hours) + (118* 13 hours) + (118 * 6 hours) = 2,832 hours. A labor rate of $140.96 is used for legal counsel, a labor rate of $165.45 is used for a financial professional, and a labor rate of $55.23 is used for a clerical worker. These labor rates are applied in the following calculation: (118 * 5 hours * $140.96) + (118 * 13 hours * $165.45) + (118 * 6 hours * $55.23) = $376,070 (rounded). All labor rates reflect EBSA estimates.

Property Manager Written Guidelines—Section I(c)

The exemption also contains a requirement for written guidelines when, in certain instances, a property manager acts on behalf of a QPAM. In this case, the QPAM is required to establish and administer the guidelines. Because agreements between an institution and a property manager are customary, the Department estimates that this requirement will impose no additional burden on QPAMs.

Reporting Reliance on the QPAM Exemption—Subsection I(g)(1)

QPAMs will have to report their reliance on the QPAM Exemption via email to *QPAM@dol.gov.* This notification would occur only once for most QPAMs. The information required under subsection I(g)(1) is limited to the legal name of the entity relying upon the exemption and any name the QPAM may be operating under. The Department expects it will take 15 minutes, on average, for each QPAM to both prepare and send this electronic notification. This burden is estimated to amount to 154 hours with an equivalent cost of $8,505.[81] The Department seeks comment on this estimate.

Notice to Plans—Subsection I(j)(1)

Within 30 days after the conviction date or receipt of an Ineligibility Notice due to participating in Prohibit Misconduct, the QPAM must provide notice to the Department at *QPAM@dol.gov* and each of its client Plans stating (i) its failure to satisfy subsection I(g)(3); and (ii) that it agrees, as required by subsection I(g)(2), not to restrict the ability of a client Plan to terminate or withdraw from its arrangement with the QPAM. With 16 ineligible QPAMs and an average of 32 client Plans per QPAM, the Department estimates that in total eight in-house legal professional hours will be required to prepare all notices as well as 13.7 hours of clerical time for distribution. In addition, mailing costs for all 16 QPAMs amount to $279.[82]

The Department believes the cost of sending this notice to the Department will be negligible since the QPAM will already prepare and send the notice to their client Plans and the notice is required to be sent electronically.

Recordkeeping—Section VI(t)

The amendment would also add a new recordkeeping provision that would apply to all 616 QPAMs. Due to the fiduciary status of QPAMs and the existing regulatory environment in which they exist, the Department assumes that QPAMs already maintain many of the required records as part of their regular business practices. In addition, the recordkeeping requirements correspond to the six-year period in ERISA sections 107 and 413. The Department expects that the recordkeeping requirement would impose, on average, a burden of five minutes per QPAM. Therefore, the Department estimates that the overall hour burden of this recordkeeping requirement for all 616 QPAMs will be 51 hours with an equivalent cost of $2,835.[83] The Department welcomes comments regarding the burden associated with the recordkeeping requirement.

If a QPAM refuses to disclose information to any of the parties listed in proposed Section VI(t) on the basis that such information is exempt from disclosure, the QPAM must provide a written notice advising the requestor of the reason for the refusal and that the Department may request such information. The Department does not have data on how often such a refusal is likely to occur; however, the Department believes such instances would be rare and impose negligible cost. The Department requests comments about whether this may happen more frequently and the possible costs.

Requesting an Individual Exemption—Section I(k)

The receipt of an Ineligibility Notice due to Prohibited Misconduct could lead a QPAM to request an individual exemption. The burden for filing an application requesting an individual exemption is included in the ICR for the Exemption Procedure Regulation, which has been approved under OMB Control Number 1210–0060. Instead of amending that ICR, the estimated burden for applications from QPAMs receiving an Ineligibility Notice due to Prohibited Misconduct is included here.[84] The Department estimates that applications for this type of individual exemption would be submitted by, on average, four entities, and require 12 hours of in-house legal professional time and 13 hours of in-house clerical time to prepare the documentation for the application that will be used by the outside counsel. The Department estimates that total labor costs (wages plus benefits plus overhead) for an in-house legal professional would average $140.96 per hour and $55.23 per hour for clerical staff.[85] Therefore, the Department estimates that preparing the documentation for the application would require 24 in-house legal professional hours (2 applications * 12 hours) and 26 clerical hours (2 applications * 13 hours) resulting in 50 total hours at an equivalent cost of approximately $4,819.[86]

The Department expects that an exemption application related to QPAM ineligibility generally is prepared by or under the direction of attorneys with specialized knowledge of ERISA. The Department assumes that these same attorneys will also prepare and distribute the notice of the application to interested parties.

Applications for Section I(g) average approximately 25 pages. Due to the somewhat focused nature of developing an application related to Section I(g) ineligibility, the Department estimates that, on average, 25 hours of outside

[81] The cost is based upon the expenditure of 0.25 hours for each QPAM: (616 QPAMs * 0.25 hours) = 154 hours in total. To calculate the equivalent cost, an hourly labor rate of $55.23 is used for a clerical worker. Therefore, the total equivalent cost amounts to: (616 QPAMs * 0.25 hours * $55.23) = $8,505 (rounded).

[82] The burden is estimated assuming 16 QPAMs will need to send the notice: 16 QPAMs * 0.5 hours of professional legal time = 8 hours to prepare all notices. The Department also assumes that 80 percent of all notices will be delivered by regular mail, requiring approximately two minutes of clerical time to prepare the notices for mailing, that is, (16 QPAMs * 32 Plans * 0.80 sent by paper) * (2/60) hours of clerical time = 13.7 hours (rounded). The Department also estimates that the cost burden for preparing and mailing the notices will be approximately equal to $279, that is, 410 * ((2 * $0.05) + $0.58) = $279 (rounded). Therefore, the total cost associated with this requirement is (8* legal professional labor rate of $140.96) + (13.7* clerical labor rate $55.23) + $279 = $2,180 (rounded). Any discrepancies in the calculations are a result of rounding.

[83] The burden is estimated for the 616 QPAMs as follows: (616 * (5/60) hours) = 51 hours (rounded). A labor rate of $55.23 is used for clerical workers. These labor rates are applied in the following calculation: (616 * (5/60) hours * $55.23) = $2,835 (rounded). All labor rates reflect EBSA estimates.

[84] In three years when control number 1210–0060 is extended, the increase in requests for individual exemptions will be captured in the historical data used for the renewal and the burden going forward will be captured there.

[85] The Department estimates of labor costs by occupation reflect estimates of total compensation and overhead costs. Estimates for total compensation are based on mean hourly wages by occupation from the 2020 Occupational Employment Statistics and estimates of wages and salaries as a percentage of total compensation by occupation from the 2020 National Compensation Survey's Employee Cost for Employee Compensation. Estimates for overhead costs for services are imputed from the 2017 Service Annual Survey. To estimate overhead cost on an occupational basis, the Office of Research and Analysis allocates total industry overhead cost to unique occupations using a matrix of detailed occupational employment for each NAICS industry. All values are presented in 2020 dollars.

[86] The 24 in-house legal professional hours are estimated to cost $3,383 (rounded), and the 26 in-house clerical hours are estimated to cost $1,436 (rounded). This totals to $4,819 (rounded). Any discrepancies in the calculations are a result of rounding.

legal professional time will be spent preparing the documentation for the application. The Department requests comment on the accuracy of this assumption. Total labor costs (wages plus benefits plus overhead) for outside legal professionals are estimated to average $494.00 per hour.[87] Therefore, the Department estimates that preparing the applications will require 50 outside legal professional hours (2 applications * 25 hours) with an equivalent cost of $24,700. This estimate includes potential meetings with Department personnel as well as preparation of supplementary documents that are requested by the Department following some of these meetings.

For applications that reach the proposed exemption stage, the QPAM must prepare and distribute a notice to interested parties. If both applications result in a published proposed exemption each year, approximately 256 notices to interested parties will be distributed to the QPAMs' client Plans, and, if the proposed exemption is granted, an objective description also must be distributed to interested parties that describes the facts and circumstances upon which the misconduct is based.[88]

The distribution of the notices to interested persons is estimated to require about five minutes of in-house clerical time per notice. Therefore, distribution of notices will require approximately 21 hours at an equivalent cost of approximately $1,178 ((5 minutes/60 minutes) * 256 notices * $55.23 hourly clerical rate). The Department estimates that 256 notices to interested persons will be sent, and that 205 of the notices (80 percent) will be distributed via first class mail with a material cost of $0.05 per page and distribution costs of $0.58 per notice. The Department estimates that each notice will contain approximately 15 pages. The foregoing generates an estimated cost of approximately $273.[89] The Department further estimates that approximately 51 (20 percent of the total number of notices) will be distributed electronically.

If the proposed exemption is ultimately granted, the requirement for each QPAM to send an objective description of the facts and circumstances upon which the misconduct is based is estimated to require about five minutes of in-house clerical time per notice. Therefore, distribution of notices will require approximately 21 hours at an equivalent cost of approximately $1,178 ((five minutes/60 minutes) * 256 notices * $55.23 hourly clerical rate). This will result in an additional distribution cost for 256 notices of which 205 (80 percent) will distributed via first class mail with a material cost of $0.05 per page and distribution costs of $0.58 per notice. The Department estimates that each notice will contain approximately five pages. This generates an estimated cost of approximately $170.[90]

Additional Requirement for QPAMs Requesting an Individual Exemption

The Department proposed new Section I(k) which indicates that a QPAM that is ineligible or anticipates that it will become ineligible due to an actual or possible Criminal Conviction may apply for an individual exemption from the Department to continue to rely on the relief provided in this exemption for a longer period than the one-year winding-down period. In such an event, an applicant should review the Department's most recently granted individual exemptions involving Section I(g) ineligibility. If an applicant requests the Department to exclude any term or condition from its exemption that is included in a recently granted individual exemption, the applicant must include a detailed statement with its exemption application explaining the reason(s) why the proposed variation is necessary and in the interest and protective of affected Plans, their participants and beneficiaries, and IRA owners. Such applicants also should provide detailed information in their applications quantifying the specific cost or harms in dollar amounts, if any, Plans would suffer if a QPAM could not rely on the exemption after the winding-down period, including the specific dollar amounts of investment losses resulting from foregone investment opportunities and any evidence supporting the proposition that investment opportunities would only be available to Plans on less advantageous terms.

All 16 QPAMs would need to include this information if they submit an exemption application. The Department estimates that it will require three hours of outside legal professional time to review past individual exemptions and draft this addition to the individual exemption application and four hours of a financial professional time. The estimated total hour burden of this requirement is thus estimated to total 12 hours of outside legal professional time and 16 hours of financial professional time, altogether resulting in an equivalent cost of $8,575.[91] The Department seeks comments on these estimates and assumptions.

Based on the foregoing, the PRA burden associated with the information collection requirements contained in the QPAM Exemption are summarized below:

Agency: DOL–EBSA.

Type of Review: Revision.

Title of Collection: Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers under Prohibited Transaction Exemption 1984–14.

OMB Control Number: 1210–0128.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 616.

Estimated Number of Annual Responses: 2,404.[92]

Frequency of Response: Annual or as needed.

Estimated Total Annual Burden Hours: 3,241.[93]

[87] The outside legal professional labor rate is a composite weighted average of the Laffey Matrix for Wage Rates (*http://www.laffeymatrix.com/see.html,* Year: 6/01/21–5/31/22): ($381 * 0.4) + ($468 * 0.35) + ($676 * 0.15) + ($764 * 0.1) = $494.

[88] 32 client Plans * 8 QPAMs.

[89] Through regular mail this cost is estimated as 205 * ((15 * $0.05) + $0.58) = $273 (rounded).

[90] Through regular mail this cost is estimated as 205 * ((5 * $0.05) + $0.58) = $170 (rounded).

[91] The burden is estimated assuming 16 QPAMs experience ineligibility that will need to include this in their individual exemption application. The average number of QPAMs covered by a single exemption is four. This amounts to: (4 applications * 3 hours) = 12 hours of outside legal professional time, and (4 applications * 4 hours) = 16 hours of a financial professional time. For an outside legal professional, a composite wage rate is used by employing a weighted average of the legal fees reported in the Laffey Matrix for Wage Rates (*http://www.laffeymatrix.com/see.html,* Year: 6/01/21–5/31/22): ($381 * 0.4) + ($468 * 0.35) + ($676 * 0.15) + ($764 * 0.1) = $494. This amounts to: (4 applications * 3 hours * $494 outside legal professional rate) = $5,928. Additionally, at an hourly rate of $165.45 for financial professional time, this cost is estimated as: (4 applications * 4 hours * $165.45 financial professional rate) = $2,647 (rounded). Therefore, the total estimated equivalent cost of this requirement amounts to: ($5,928 + $2,647) = $8,575 (rounded).

[92] The Department estimates that in each year, 12 QPAMs will need to update their policies and procedures, 118 QPAMs will need to conduct an audit and issue an audit report, 16 ineligible QPAMs will need to send the notice to 32 plans each within 30 days after the Ineligibility Date, all 616 QPAMs will have report their reliance on the QPAM exemption, all 616 QPAMs will need to maintain the records, two applicants will request an individual exemption, 8 QPAMs will distribute notices to their 32 interested parties each for applications that reach the stage of publication, 8 QPAMs will distribute objective description of the facts to their 32 interested parties if the correspondent proposed exemption is ultimately granted, 16 QPAMs will need to add the review of recently granted exemptions, along with the potential costs to Plans quantification. This results in a three-year average of 2,404 = (12 + 118 + (16 * 32) + 616 + 616 + 2 + (8 * 32) + (8 * 32) + 16) responses each year.

[93] To satisfy the conditions of the existing QPAM Exemption, the Department estimates that in each

Continued

Estimated Total Annual Burden Cost: $2,950,722.[94]

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[95] imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act and are likely to have a significant economic impact on a substantial number of small entities.[96] Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed amendment.

The Department estimates that there are 616 potential QPAMs by approximating the total number of service providers who in 2019 provided ''Investment Management'' and ''Named Fiduciary'' services simultaneously to at least one plan as reported on Schedule C of the 2019 Form 5500, and whose NAICS codes start with the 2-digit 52, which corresponds to Finance and Insurance Institutions.[97] There are about 234,440 small firms that report a NAICS code of 52.[98] The Department does not know how many QPAMs fit the SBA's small entity definition for the finance and insurance sector. However, if the Department assumes that all 616 potential QPAMs are small entities, they will comprise only 0.3 percent of small firms in this industry (616 possible QPAMS out of 234,440 small firms with NAICS code 52), which is not a substantial number of small entities.[99]

Based on the foregoing, pursuant to section 605(b) of RFA, the Acting Assistant Secretary of the Employee Benefits Security Administration hereby certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Department invites comments on this certification.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 requires each federal agency to prepare a written statement assessing the effects of any federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by state, local, and tribal governments, in the aggregate, or by the private sector.[100] For purposes of the Unfunded Mandates Reform Act, as well as Executive Order 12875, this proposal does not include any federal mandate that the Department expects would result in such expenditures by state, local, or tribal governments, or the private sector.[101]

Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism, and requires adherence by federal agencies to specific criteria in the process of their formulation and implementation of policies that have ''substantial direct effects'' on the states, the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government.[102] Federal agencies promulgating regulations that have federalism implications must consult with state and local officials and describe the extent of their consultation and the nature of the concerns of state and local officials in the preamble to the final rule.

In the Department's view, this proposed amendment would not have federalism implications because it would not have direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibilities among various levels of government. The Department welcomes input from affected states regarding this assessment.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) and Code section 4975(c)(2) does not relieve a fiduciary, or other party in interest or disqualified person with respect to a Plan, from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404 which require, among other things, that a fiduciary act prudently and discharge their duties respecting the Plan solely in the interests of the participants and beneficiaries of the Plan. Additionally, the fact that a transaction is the subject of an exemption does not affect the requirement of Code section 401(a) that the Plan must operate for the exclusive benefit of the employees of the employer maintaining the Plan and their beneficiaries;

(2) Before the amendment to the exemption may be granted under ERISA section 408(a) and Code section 4975(c)(2), the Department must find that it is administratively feasible, in the interests of Plans, their participants and beneficiaries, and IRA owners, and protective of the rights of participants and beneficiaries of the Plan and IRA owners;

(3) If granted, the amended exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(4) The proposed amendment, if granted, is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and

subsequent year, there will be an hour burden of 3,241. This burden is calculated as follows: (12 hours for a fraction of QPAMs to update their policies and procedures internally) + (2,832 hours for QPAMs to provide needed materials for the audit) + (8 hours for ineligible QPAMs to prepare the notice to Plans) + (13.7 hours for ineligible QPAMs to send by regular mail the notice to Plans) + (154 hours for reporting the reliance on the QPAM Exemption) + (51 hours for recordkeeping) + (50 hours for applicant QPAMs to prepare the documentation for the application) + (50 hours for applicant QPAMs to prepare the documentation for the application with an outside legal professional) + (42 hours for the distribution of notices and objective descriptions for applications that reach the stage of publication) + (28 hours for QPAMs to include the addition for the individual exemption application) = 3,241 hours (rounded).

[94] To satisfy the conditions of the QPAM Exemption, the Department estimates that in each year, there will be a cost of $2,950,722. This accounts for the cost of $2,950,000 associated with hiring a firm to conduct the audit, $279 for the ineligible QPAMs to send paper notices, $273 for the distribution of notices for applications that reach the stage of publication via regular mail, and $170 for the distribution of objective description of the facts and circumstances via regular mail if the correspondent proposed exemptions are granted. Any discrepancies in the calculations are a result of rounding.

[95] 5 U.S.C. 601 *et seq.* (1980).

[96] 5 U.S.C. 551 *et seq.* (1946).

[97] Using 2019 Form 5500 data, the Department counted in total 1390 service providers who provided services of ''Investment Management'' and ''Named Fiduciary,'' of which only 765 reported their business code. Out of these 765 providers, 339 reported their business code starting with the 2-digit NAICS code 52, yielding a ratio of 0.44 of potential QPAMs to other providers. Therefore, the Department estimates that there were 0.44 * 1390 = 616 potential QPAMs in 2019.

[98] Source: Small Business Administration calculations of the number of firms reporting a NAICS code of 52 from the 2017 Statistics of U.S. Businesses.

[99] The Department also notes that the asset and equity thresholds were included in the QPAM Exemption as an important protection to ensure a QPAM is large enough to withstand the influence of other Plan fiduciaries and parties in interest. The exemption, by design, was not intended for smaller entities. Without updates to the size thresholds, this protective aspect of the exemption will continually erode due to inflation.

[100] 2 U.S.C. 1501 *et seq.* (1995).

[101] Enhancing the Intergovernmental Partnership, 58 FR 58093 (Oct. 28, 1993).

[102] Federalism, *supra* note 46.

transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Proposed Amendment

Section I—General Exemption

The restrictions of ERISA section 406(a)(1)(A) through (D) and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (D), shall not apply to a transaction between a Party in Interest with respect to a Plan and an Investment Fund (as defined in Section VI(b)) in which the Plan has an interest, and which is managed by a Qualified Professional Asset Manager (QPAM) (as defined in Section VI(a)), if the following conditions are satisfied:

(a) At the Time of the Transaction (as defined in Section VI(i)), the Party in Interest, or its Affiliate (as defined in Section VI(c)), does not have the authority to—

(1) Appoint or terminate the QPAM as a manager of the Plan assets involved in the transaction, or

(2) Negotiate on behalf of the Plan the terms of the management agreement with the QPAM (including renewals or modifications thereof) with respect to the Plan assets involved in the transaction;

Notwithstanding the foregoing, in the case of an Investment Fund in which two or more unrelated Plans have an interest, a transaction with a Party in Interest with respect to a Plan will be deemed to satisfy the requirements of this Section I(a) if the assets of the Plan managed by the QPAM in the Investment Fund, when combined with the assets of other Plans established or maintained by the same employer (or Affiliate thereof described in Section VI(c)(1) below) or by the same employee organization, and managed in the same Investment Fund, represent less than ten (10) percent of the assets of the Investment Fund;

(b) The transaction is not described in—

(1) Prohibited Transaction Exemption 2006–16 (71 FR 63786; October 31, 2006) (relating to securities lending arrangements) (as amended or superseded),

(2) Prohibited Transaction Exemption 83–1 (48 FR 895; January 7, 1983) (relating to acquisitions by plans of interests in mortgage pools) (as amended or superseded), or

(3) Prohibited Transaction Exemption 82–87 (47 FR 21331; May 18, 1982) (relating to certain mortgage financing arrangements) (as amended or superseded);

(c) The terms of the transaction, commitments, and investment of fund assets, and any associated negotiations on behalf of the Investment Fund are the sole responsibility of the QPAM. Either the QPAM, or (so long as the QPAM retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the QPAM, makes the decision on behalf of the Investment Fund to enter into the transaction, provided that the transaction is not part of an agreement, arrangement, or understanding designed to benefit a Party in Interest. The prohibited transaction relief provided under this exemption applies only in connection with an Investment Fund that is established primarily for investment purposes. No relief is provided under this exemption for any transaction that has been planned, negotiated, or initiated by a Party in Interest, in whole or in part, and presented to a QPAM for approval because the QPAM would not have sole responsibility with respect to the transaction as required by this Section I(c);

(d) The Party in Interest dealing with the Investment Fund is neither the QPAM nor a person Related to the QPAM;

(e) The transaction is not entered into with a Party in Interest with respect to any Plan whose assets managed by the QPAM, when combined with the assets of other Plans established or maintained by the same employer (or Affiliate thereof described in subsection VI(c)(1) below) or by the same employee organization, and managed by the QPAM, represent more than twenty (20) percent of the total client assets managed by the QPAM at the time of the transaction; and

(f) At the Time of the Transaction, and at the time of any subsequent renewal or modification thereof that requires the consent of the QPAM, the terms of the transaction are at least as favorable to the Investment Fund as the terms generally available in arm's length transactions between unrelated parties;

(g) *Integrity.*

(1) *Reporting reliance on the exemption to the Department.* Any QPAM that relies upon this exemption must notify the Department via email at *QPAM@dol.gov.* Each QPAM that relies upon the exemption must report the legal name of each business entity relying upon the exemption in the email to the Department and any name the QPAM may be operating under. This notification needs to be reported only once unless there is a change to the legal name or operating name(s) of the QPAM relying upon the exemption or the QPAM no longer is relying on the exemptive relief provided in the exemption.

(2) *Written Management Agreement.* In its Written Management Agreement with clients (as required under Section VI(a)), the QPAM must include a statement that, in the event of a Criminal Conviction (described in subsection I(g)(3)(A)) or a Written Ineligibility Notice (described in subsection I(g)(3)(B)) and for at least a period of 10 years, the QPAM:

(A) agrees not to restrict the ability of a client Plan to terminate or withdraw from its arrangement with the QPAM;

(B) will not impose any fees, penalties, or charges on client Plans in connection with the process of terminating or withdrawing from an Investment Fund managed by the QPAM except for reasonable fees, appropriately disclosed in advance, that are specifically designed to: (i) prevent generally recognized abusive investment practices or (ii) ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in a like manner to all such investors;

(C) agrees to indemnify, hold harmless, and promptly restore actual losses to the client Plans for any damages that directly result to them from a violation of applicable laws, a breach of contract, or any claim arising out of the conduct that is the subject of a Criminal Conviction or Written Ineligibility Notice of the QPAM or an Affiliate (as defined in Section VI(d)) or an owner, direct or indirect, of a five (5) percent or more interest in the QPAM. Actual losses specifically include losses and costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 as a result of a QPAM's inability to rely upon the relief in the QPAM Exemption; and

(D) will not employ or knowingly engage any individual that participated in the conduct that is the subject of a Criminal Conviction or Written Ineligibility Notice regardless of whether the individual is separately convicted in connection with the criminal conduct.

(3) *Ineligibility due to a Criminal Conviction or Written Ineligibility Notice.* Subject to the Ineligibility Date

provision set forth in Section I(h), a QPAM is ineligible to rely on this exemption for 10 years following:

(A) A Criminal Conviction, as defined in Section VI(r), of the QPAM or any Affiliate thereof (as defined in Section VI(d))—or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM; or

(B) Receipt by the QPAM or any Affiliate thereof (as defined in Section VI(d))—or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM of a Written Ineligibility Notice issued by the Department for participating in Prohibited Misconduct. For purposes of this exemption, ''participating in'' refers not only to active participation in the Prohibited Misconduct, but also to knowing approval of the conduct, or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to the appropriate compliance personnel.

(h) *Ineligibility Date.* A QPAM shall become ineligible:

(1) as of the ''Conviction Date,'' which is the date of the judgment of the trial court (or the date of the judgment of any court in a foreign jurisdiction that is the equivalent of a U.S. federal or state trial court), regardless of whether that judgment is appealed; or

(2) the date of the written ''Ineligibility Notice'' described in Section I(i), below. A person will become eligible to rely on this exemption again only upon a subsequent judgment reversing such person's conviction or the expiration of the 10-year ineligibility period.

(i) *Written Ineligibility Notice—Warning and Opportunity to be Heard.* Before issuing a Written Ineligibility Notice, the Department will issue a written warning to the QPAM identifying specific conduct implicating subsection I(g)(3)(B). The Department will provide the QPAM with the opportunity to be heard, in person (including by phone or videoconference), or in writing, or a combination, before the Department makes a decision about whether to issue the Written Ineligibility Notice. The QPAM will have 20 days from the date of the warning letter to respond with a request for a conference. If a response is not received by the Department within 20 days after the date of the warning letter, the Department will issue a written Ineligibility Notice. The opportunity to be heard will be limited to one conference, which will be scheduled within 30 days of the QPAM's response to the written warning, unless the Department determines in its sole discretion to allow additional conferences. The written Ineligibility Notice will articulate the basis for the Department's determination that the conduct described in subsection I(g)(3)(B) has occurred.

(j) *One-Year Winding-Down Period Due to Ineligibility.* Any QPAM that becomes ineligible under subsection I(g)(3) must engage in a winding-down period during which relief is available under this exemption only for the QPAM's client Plans that had a pre-existing Written Management Agreement required under subsection I(g)(2) above on the Ineligibility Date. Relief during the winding-down period is available for a period of one year after the Ineligibility Date and the QPAM must fully comply with each condition of the exemption during the one-year period. A QPAM must ensure that it manages plan assets prudently and loyally during the winding-down period. During the winding-down period, the QPAM must comply with the following additional conditions:

(1) Within 30 days after the Ineligibility Date the QPAM must provide notice to the Department at *QPAM@dol.gov* and each of its client Plans stating:

(A) its failure to satisfy subsection I(g)(3) and the resulting initiation of this one-year winding-down period;

(B) that in accordance with subsections I(g)(2)(A) and (B), it will not restrict the ability of its client Plans to terminate or withdraw from its arrangement with the QPAM nor impose fees, penalties, or charges on the client Plan in connection with terminating or withdrawing from a QPAM-managed Investment Fund; and agrees to indemnify, hold harmless, and promptly restore losses to the client Plan in accordance with subsection I(g)(2)(C);

(C) an objective description of the facts and circumstances upon which the Criminal Conviction or Written Ineligibility Notice is based, written with sufficient detail to fully inform the client Plan's fiduciary of the nature and severity of the conduct so that such fiduciary can satisfy its fiduciary duties of prudence and loyalty with respect to hiring, monitoring, evaluating, and retaining the QPAM in a non-QPAM capacity;

(2) No later than the Ineligibility Date under Section I(h), the QPAM must not employ or knowingly engage any individual that participated in the conduct that is the subject of a Criminal Conviction or Written Ineligibility Notice causing ineligibility of the QPAM under subsection I(g)(3);

(3) The QPAM may not engage in new transactions after the Ineligibility Date in reliance on this exemption for existing client Plans; and

(4) After the one-year winding-down period expires, the entity may not rely on the relief provided in this exemption until the expiration of the 10-year ineligibility period unless it obtains an individual exemption permitting it to continue relying upon this exemption.

(k) *Requests for an Individual Exemption.* A QPAM that is ineligible or anticipates that it will become ineligible due to an actual or possible Criminal Conviction may apply for an individual exemption from the Department to continue to rely on the relief provided in this exemption for a longer period than the one-year winding-down period. An applicant should review the Department's most recently granted individual exemptions involving Section I(g) ineligibility with the expectation that similar conditions will be required if the Department proposes and grants an exemption. If an applicant requests the Department to exclude any term or condition from its exemption that is included in a recently granted individual exemption, the applicant must include a detailed statement with its exemption application explaining the reason(s) why the proposed variation is necessary and in the interest and protective of affected Plans, their participants and beneficiaries, and individuals for whose benefit a Plan described in Code section 4975(e)(1)(B) or (C) is established (IRA owners). The Department will review such requests consist with the requirements of ERISA section 408(a) and Code section 4975(c)(2). Such applicants also should provide detailed information in their applications quantifying the specific cost or harms in dollars amounts, if any, their client Plans would suffer if the QPAM could not rely on the exemption after the winding-down period, including the specific dollar amounts of investment losses resulting from foregone investment opportunities and any evidence supporting the proposition that investment opportunities would be available to client Plans on less advantageous terms. An applicant should not construe the Department's acceptance of an individual exemption application as a guarantee that the Department will grant an individual exemption. A QPAM that submits an individual exemption application must ensure that it manages Plan assets prudently and loyally during the winding-down period.

Section II—Specific Exemption for Employers

The restrictions of ERISA sections 406(a), 406(b)(1), and 407(a) and the

taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to:

(a) The sale, leasing, or servicing of Goods or the furnishing of services, to an Investment Fund managed by a QPAM by a Party in Interest with respect to a Plan having an interest in the fund, if—

(1) The Party in Interest is an employer any of whose employees are covered by the Plan or is a person who is a Party in Interest by virtue of a relationship to such an employer (described in Section VI(c) below),

(2) The transaction is necessary for the administration or management of the Investment Fund,

(3) The transaction takes place in the ordinary course of a business engaged in by the Party in Interest with the general public,

(4) The amount attributable in any taxable year of the Party in Interest to transactions engaged in with an Investment Fund pursuant to this Section II(a) does not exceed one (1) percent of the gross receipts derived from all sources for the prior taxable year of the Party in Interest, and

(5) The requirements of Sections I(c) through (g) above are satisfied with respect to the transaction.

(b) The leasing of office or commercial space by an Investment Fund maintained by a QPAM to a Party in Interest with respect to a Plan having an interest in the Investment Fund, if—

(1) The Party in Interest is an employer any of whose employees are covered by the Plan or is a person who is a Party in Interest by virtue of a relationship to such an employer (described in Section VI(c) below);

(2) No commission or other fee is paid by the Investment Fund to the QPAM or to the employer, or to an Affiliate of the QPAM or employer (as defined in Section VI(c) below), in connection with the transaction;

(3) Any unit of space leased to the Party in Interest by the Investment Fund is suitable (or adaptable without excessive cost) for use by different tenants;

(4) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building, integrated office park, or of the commercial center (if the lease does not pertain to office space);

(5) In the case of a Plan that is not an eligible individual account plan (as defined in ERISA section 407(d)(3)), immediately after the transaction is entered into, the aggregate fair market value of employer real property and employer securities held by the Investment Funds of the QPAM in which the Plan has an interest does not exceed ten (10) percent of the fair market value of the assets of the Plan held in those Investment Funds. In determining the aggregate fair market value of employer real property and employer securities as described herein, a Plan shall be considered to own the same proportionate undivided interest in each asset of the Investment Fund or funds as its proportionate interest in the total assets of the Investment Fund(s). For purposes of this requirement, the term ''employer real property'' means real property leased to, and the term ''employer securities'' means securities issued by an employer any of whose employees are covered by the Plan or a Party in Interest of the Plan by reason of a relationship to the employer described in ERISA section 3(14)(E) or (G); and

(6) The requirements of Sections I(c) through (g) above are satisfied with respect to the transaction.

Section III—Specific Lease Exemption for QPAMs

The restrictions of ERISA section 406(a)(1)(A) through (D), 406(b)(1) and (2), and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the leasing of office or commercial space by an Investment Fund managed by a QPAM to the QPAM, a person who is a Party in Interest of a Plan by virtue of a relationship to such QPAM described in ERISA section 3(14)(G), (H), or (I), or a person not eligible for the General Exemption of Section I above by reason of Section I(a), if—

(a) The amount of space covered by the lease does not exceed the greater of 7,500 square feet or one (1) percent of the rentable space of the office building, integrated office park, or of the commercial center in which the Investment Fund has the investment;

(b) The unit of space subject to the lease is suitable (or adaptable without excessive cost) for use by different tenants;

(c) At the Time of the Transaction, and at the time of any subsequent renewal or modification thereof that requires the consent of the QPAM, the terms of the transaction are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties; and

(d) No commission or other fee is paid by the Investment Fund to the QPAM, any person possessing the disqualifying powers described in Section I(a), or any Affiliate of such persons (as defined in Section VI(c) below), in connection with the transaction.

Section IV—Transactions Involving Places of Public Accommodation

The restrictions of ERISA section 406(a)(1)(A) through (D) and 406(b)(1) and (2) and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the furnishing of services and facilities (and Goods incidental thereto) by a place of public accommodation owned by an Investment Fund managed by a QPAM to a Party in Interest with respect to a Plan having an interest in the Investment Fund, if the services and facilities (and incidental Goods) are furnished on a comparable basis to the general public.

Section V—Specific Exemption Involving QPAM-Sponsored Plans

The relief in Sections I, III, or IV above from the applicable restrictions of ERISA section 406(a), section 406(b)(1) and (2), and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall apply to a transaction involving the assets of a Plan sponsored by the QPAM or an Affiliate (as defined in Section VI(c)) of the QPAM if:

(a) The QPAM has discretionary authority or control with respect to the Plan assets involved in the transaction;

(b) The QPAM adopts Written Policies and Procedures that are designed to ensure compliance with the conditions of the exemption;

(c) An independent auditor, who has appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions and so represents in writing, conducts an Exemption Audit on an annual basis. Following completion of the Exemption Audit, the auditor shall issue a written report to the Plan presenting its specific findings regarding the level of compliance with: (1) the Written Policies and Procedures adopted by the QPAM in accordance with Section V(b) above, and (2) the objective requirements of this exemption. The written report shall also contain the auditor's overall opinion regarding whether the QPAM's program complied with: (1) the Written Policies and Procedures adopted by the QPAM, and (2) the objective requirements of the exemption. The Exemption Audit and the written report must be completed within six months following the end of the year to which the audit relates; and

(d) The transaction meets the applicable requirements set forth in Sections I, III, or IV above.

Section VI—Definitions and General Rules

For purposes of this exemption:

(a) The term ''Qualified Professional Asset Manager'' or ''QPAM'' means an Independent Fiduciary which is—

(1) A bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 that has the power to manage, acquire or dispose of assets of a Plan, which bank has, as of the last day of its most recent fiscal year, Equity Capital in excess of $2,720,000; or

(2) A savings and loan association, the accounts of which are insured by the Federal Deposit Insurance Corporation that has made application for and been granted trust powers to manage, acquire or dispose of assets of a Plan by a State or Federal authority having supervision over savings and loan associations, which savings and loan association has, as of the last day of its most recent fiscal year, Equity Capital or Net Worth in excess of $2,720,000; or

(3) An insurance company which is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a Plan, which company has, as of the last day of its most recent fiscal year, Net Worth in excess of $2,720,000 and which is subject to supervision and examination by a State authority having supervision over insurance companies; or

(4) An investment adviser registered under the Investment Advisers Act of 1940 that has total client assets under its management and control in excess of $135,870,000 as of the last day of its most recent fiscal year, and either (A) Shareholders' or Partners' Equity in excess of $2,040,000, or (B) payment of all of its liabilities including any liabilities that may arise by reason of a breach or violation of a duty described in ERISA sections 404 and 406 is unconditionally guaranteed by—(i) A person with a relationship to such investment adviser described in subsection VI(c)(1) below if the investment adviser and such Affiliate have Shareholders' or Partners' Equity, in the aggregate, in excess of $2,040,000; or (ii) A person described in (a)(1), (a)(2) or (a)(3) of Section VI above; or (iii) A broker-dealer registered under the Securities Exchange Act of 1934 that has, as of the last day of its most recent fiscal year, Net Worth in excess of $2,040,000;

Provided that such bank, savings and loan association, insurance company, or investment adviser has acknowledged in a ''Written Management Agreement'' that it is a fiduciary with respect to each Plan that has retained the QPAM and which complies with subsection I(g)(2).

(5) By publication through notice in the **Federal Register**, the Department will make subsequent annual adjustments for inflation to the Equity Capital, Net Worth, and asset management thresholds in subsection VI(a)(1) through (4), rounded to the nearest $10,000, no later than January 31 of each year.

(b) An ''Investment Fund'' includes single customer and pooled separate accounts maintained by an insurance company, individual trusts and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of the QPAM) is subject to the discretionary authority of the QPAM.

(c) For purposes of Section I(a) and Sections II and V above, an ''Affiliate'' of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, Controlling, Controlled by, or under Common Control with the person;

(2) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, ten (10) percent or more partner (except with respect to Section II this figure shall be five (5) percent), or highly compensated employee as defined in Code section 4975(e)(2)(H) (but only if the employer of such employee is the Plan sponsor); and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in Code section 4975(e)(2)(H), or who has direct or indirect authority, responsibility or control regarding the custody, management or disposition of Plan assets involved in the transaction. A named fiduciary (within the meaning of ERISA section 402(a)(2)) of a Plan with respect to the Plan assets involved in the transaction and an employer any of whose employees are covered by the Plan will also be considered Affiliates with respect to each other for purposes of Section I(a) above if such employer or an Affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(d) For purposes of Section I(g) above an ''Affiliate'' of a person means—

(1) Any person directly or indirectly through one or more intermediaries, Controlling, Controlled by, or under Common Control with the person;

(2) Any director of, Relative of, or partner in, any such person;

(3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a five (5) percent or more partner or owner; and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as defined in Code section 4975(e)(2)(H) or officer (earning ten (10) percent or more of the yearly wages of such person); or

(B) Has direct or indirect authority, responsibility, or control regarding the custody, management or disposition of Plan assets.

(e) The terms ''Controlling,'' ''Controlled by,'' ''under Common Control with,'' and ''Controls'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term ''Party in Interest'' means a person described in ERISA section 3(14) and includes a ''disqualified person,'' as defined in Code section 4975(e)(2).

(g) The term ''Relative'' means a relative as that term is defined in ERISA section 3(15), or a brother, a sister, or a spouse of a brother or sister.

(h) A QPAM is ''Related'' to a Party in Interest for purposes of Section I(d) above if, as of the last day of its most recent calendar quarter: (i) The QPAM owns a ten (10) percent or more Interest in the Party in Interest; (ii) a person Controlling, or Controlled by, the QPAM owns a twenty (20) percent or more Interest in the Party in Interest; (iii) the Party in Interest owns a ten (10) percent or more Interest in the QPAM; or (iv) a person Controlling, or Controlled by, the Party in Interest owns a twenty (20) percent or more Interest in the QPAM. Notwithstanding the foregoing, a Party in Interest is ''Related'' to a QPAM if: (i) A person Controlling, or Controlled by, the Party in Interest has an ownership Interest that is less than twenty (20) percent but greater than ten (10) percent in the QPAM and such person exercises Control over the management or policies of the QPAM by reason of its ownership Interest; (ii) a person Controlling, or Controlled by, the QPAM has an ownership Interest that is less than twenty (20) percent but greater than ten (10) percent in the Party in Interest and such person exercises Control over the management or policies of the Party in Interest by reason of its ownership Interest. For purposes of this definition:

(1) The term ''Interest'' means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an ''Interest'' if, other than in a fiduciary capacity, the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(i) ''At the Time of the Transaction'' means the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after December 21, 1982, or a renewal that requires the consent of the QPAM occurs on or after December 21, 1982, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Notwithstanding the foregoing, this exemption shall cease to apply to a transaction exempt by virtue of Section I or Section II above at such time as the percentage requirement contained in Section I(e) is exceeded, unless no portion of such excess results from an increase in the assets transferred for discretionary management to a QPAM. For this purpose, assets transferred do not include the reinvestment of earnings attributable to those Plan assets already under the discretionary management of the QPAM. Nothing in this paragraph shall be construed as exempting a transaction entered into by an Investment Fund which becomes a transaction described in ERISA section 406 or Code section 4975 while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(j) The term ''Goods'' includes all things which are movable or which are fixtures used by an Investment Fund but does not include securities, commodities, commodities futures, money, documents, instruments, accounts, chattel paper, contract rights, and any other property, tangible or intangible, which, under the relevant facts and circumstances, is held primarily for investment.

(k) For purposes of subsection VI(a)(1) and (2) above, the term ''Equity Capital'' means stock (common and preferred), surplus, undivided profits, contingency reserves, and other capital reserves.

(l) For purposes of subsection VI(a)(2), (3), and (4) above, the term ''Net Worth'' means capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves.

(m) For purposes of subsection VI(a)(4) above, the term ''Shareholders' or Partners' Equity'' means the equity shown in the most recent balance sheet prepared within the two years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

(n) The term ''Plan'' refers to an employee benefit plan described in ERISA section 3(3) and/or a plan described in Code section 4975(e)(1).

(o) For purposes of Section VI(a) above, the term ''Independent Fiduciary'' means a fiduciary managing the assets of a Plan in an Investment Fund that is independent of and unrelated to the employer sponsoring such Plan. For purposes of this exemption, the fiduciary will not be deemed to be independent of and unrelated to the employer sponsoring the Plan if such fiduciary directly or indirectly Controls, is Controlled by, or is under Common Control with the employer sponsoring the Plan. Notwithstanding the foregoing: (1) for the period from December 21, 1982, through November 3, 2010, a QPAM managing the assets of a Plan in an Investment Fund will not fail to satisfy the requirements of this section solely because such fiduciary is the employer sponsoring the Plan or directly or indirectly Controls, is Controlled by, or is under Common Control with the employer sponsoring the Plan; and (2) effective after November 3, 2010 a QPAM acting as a manager for its own Plan or the Plan of an Affiliate (as defined in subsection VI(c)(1) above) will be deemed to satisfy the requirements of this section if the requirements of Section V above are met.

(p) An ''Exemption Audit'' of a Plan must consist of the following:

(1) A review of the Written Policies and Procedures adopted by the QPAM pursuant to Section V(b) above for consistency with each of the objective requirements of this exemption (as described in Section VI(q) below);

(2) A test of a representative sample of the Plan's transactions during the audit period that is sufficient in size and nature to afford the auditor a reasonable basis:

(A) To make specific findings regarding whether the QPAM is in compliance with (i) the Written Policies and Procedures adopted by the QPAM pursuant to Section VI(q) below and (ii) the objective requirements of this exemption, and

(B) To render an overall opinion regarding the level of compliance of the QPAM's program with subsection VI(p)(2)(A)(i) and (ii) above;

(3) A determination as to whether the QPAM has satisfied the definition of a QPAM under the exemption; and

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings.

(q) For purposes of Section VI(p), the Written Policies and Procedures must describe the following objective requirements of this exemption and the steps adopted by the QPAM to ensure compliance with each of these requirements:

(1) The definition of a QPAM in Section VI(a);

(2) The requirement of Sections V(a) and I(c) regarding the discretionary authority or control of the QPAM with respect to the Plan assets involved in the transaction, in negotiating the terms of the transaction and with respect to the decision on behalf of the Investment Fund to enter into the transaction;

(3) For a transaction described in Section I above:

(A) That the transaction is not entered into with any person who is excluded from relief under Section I(a), Section I(d), or Section I(e) above;

(B) That the transaction is not described in any of the class exemptions listed in Section I(b) above;

(4) If the transaction is described in Section III above:

(A) That the amount of space covered by the lease does not exceed the limitations described in Section III(a) above, and

(B) That no commission or other fee is paid by the Investment Fund as described in Section III(d) above.

(r) ''Criminal Conviction'' means the person or entity:

(1) is convicted in a U.S. federal or state court or released from imprisonment, whichever is later, as a result of any felony involving abuse or misuse of such person's Plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment,

embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or a crime identified in ERISA section 411; or

(2) is convicted by a foreign court of competent jurisdiction as a result of a crime, however denominated by the laws of the relevant foreign government, that is substantially equivalent to an offense described in (1), above.

(s) ''Prohibited Misconduct'' means:

(1) any conduct that forms the basis for a non-prosecution or deferred prosecution agreement that, if successfully prosecuted, would have constituted a crime described in Section VI(r);

(2) any conduct that forms the basis for an agreement, however denominated by the laws of the relevant foreign government, that is substantially equivalent to a non-prosecution agreement or deferred prosecution agreement described in (1);

(3) engaging in a systematic pattern or practice of violating the conditions of this exemption in connection with otherwise non-exempt prohibited transactions;

(4) intentionally violating the conditions of this exemption in connection with otherwise non-exempt prohibited transactions; or

(5) providing materially misleading information to the Department in connection with the conditions of the exemption.

(t) The QPAM maintains the records necessary to enable the persons described in subsection (t)(2) below to determine whether the conditions of this exemption have been met with respect to a transaction for a period of six years from the date of the transaction in a manner that is reasonably accessible for examination. No prohibited transaction will be considered to have occurred solely on the basis of the unavailability of such records if they are lost or destroyed due to circumstances beyond the control of the QPAM before the end of the six-year period.

(1) No party, other than the QPAM responsible for complying with this Section VI(r), will be subject to the civil penalty that may be assessed under ERISA section 502(i) or the excise tax imposed by Code section 4975(a) and (b), if applicable, if the records are not maintained or available for examination as required by this Section VI(t) below.

(2) Except as provided in subsection (3) or precluded by 12 U.S.C. 484 (regarding limitations on visitorial powers for national banks), and notwithstanding any provisions of ERISA section 504(a)(2) and (b), the records are reasonably available at their customary location during normal business hours for examination by:

(A) Any authorized employee of the Department or the Internal Revenue Service or another state or federal regulator,

(B) Any fiduciary of a Plan invested in an Investment Fund managed by the QPAM,

(C) Any contributing employer and any employee organization whose members are covered by a Plan invested in an Investment Fund managed by the QPAM, or

(D) Any participant or beneficiary of a Plan invested in an Investment Fund managed by the QPAM.

(3) None of the persons described in subsection (2)(B) through (D) above are authorized to examine records regarding an Investment Fund that they are not invested in, privileged trade secrets or privileged commercial or financial information of the QPAM, or information identifying other individuals.

(4) Should the QPAM refuse to disclose information to a person described in subsection (2)(A) through (D) above on the basis that the information is exempt from disclosure, the QPAM must provide a written notice advising the requestor of the reasons for the refusal and that the Department may request such information by the close of the thirtieth (30th) day following the request.

(5) A QPAM's failure to maintain the records necessary to determine whether the conditions of this exemption have been met will result in the loss of the relief provided under this exemption only for the transaction or transactions for which such records are missing or have not been maintained. Such failure does not affect the relief for other transactions if the QPAM maintains required records for such transactions in compliance with this Section VI(t).

Signed at Washington, DC, this 18th day of July, 2022.

Ali Khawar,

Acting Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

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